SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 578

SOUTHERN RAILWAY COMPANY, PETITIONER,

vs.

THE UNITED STATES

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JANUARY 17, 1944.

—9952

[fol. 1]

IN THE COURT OF CLAIMS OF THE UNITED STATES

No. 45227

SOUTHERN RAILWAY COMPANY, *Plaintiff*,

v.

THE UNITED STATES OF AMERICA, *Defendant*

I. PETITION—Filed July 18, 1940

To the Honorable the Court of Claims:

Plaintiff, Southern Railway Company, respectfully represents:

For a First Cause of Action

I

Plaintiff, at all times hereinafter mentioned, was and is a domestic corporation organized and existing under the laws of the State of Virginia, engaged in the business of common carrier of passengers and freight by railroad, with its principal office in the City of Richmond, County of Henrico, State of Virginia.

[fol. 2]

II

Plaintiff, in the conduct of its business as a common carrier of passengers and freight, has transported property of defendant for its account and benefit and upon its request and for which defendant is indebted to plaintiff, all as shown hereinafter.

III

None of plaintiff's lines of railway were built with the aid of lands granted by the Congress of the United States, except that portion thereof lying between Jacksonville, Alabama, and Selma, Alabama, a distance of one hundred and forty-five (145) miles; and hence, except upon shipments of property of defendant moving for its account over plaintiff's lines of railway between the points named, plaintiff, prior to the inception of Freight Land-Grant Equalization Agreements, hereinafter more specifically referred to, collected the full amount of its duly filed, published and

established charges, and refused to allow defendant a deduction of fifty per centum (50%) from its regularly established charges as was done where its property moved over plaintiff's land-grant mileage aforesaid. As a result, defendant did not route its shipments via plaintiff's lines of railway except to extent absolutely necessary where there were available to defendant other reasonable and practical routes via lines of railway with greater land-grant mileage. This failure of defendant to route its shipments via the more direct route over plaintiff's lines resulted in loss of traffic to plaintiff, and delay, inconvenience, and expense to defendant in shipping by longer and less direct routes.

[fol. 3] IV

In the situation set out in paragraph III above, plaintiff and defendant, for their mutual benefit, had in effect for many years prior to November 29, 1933, certain agreements known as Freight Land-Grant Equalization Agreements, whereby plaintiff agreed with defendant to transport its property moving for its account via plaintiff's non-land-grant mileage at a rate equal to the rate applying via the favored land-grant road. In order to continue this arrangement in force, plaintiff (and certain other common carriers by railroad comprising the group of carriers included in the trade name "Southern Railway System"), on November 29, 1933, entered into an agreement with defendant through the Quartermaster General, United States War Department, entitled Freight Land-Grant Equalization Agreement, a copy of which marked Exhibit No. 1, is attached hereto and made a part hereof. Said agreement provided in part that plaintiff (and the other carriers named) agreed:

> "subject to the conditions and exceptions stated below, to accept for the transportation of property shipped for account of the Government of the United States and for which the Government of the United States is lawfully entitled to reduced rates over land-grant roads, the lowest net rates lawfully available, as derived through deductions account of land-grant distance from the lawful rates filed with the Interstate Commission applying from point of original to destination at time of movement."

This agreement by its terms became effective December 1st, 1933, and remained in full force and effect at all times thereafter until May 1, 1938, on which date it was canceled [fol. 4] and superseded by another agreement between plaintiff (and certain other of the common carriers by railroad comprising the group of carriers included in the trade name "Southern Railway System") and defendant, entitled Freight Land-Grant Equalization Agreement dated April 1, 1938. This last named agreement, a copy of which, marked Exhibit No. 2, is attached hereto and made a part hereof, so far as pertinent here is identical in terms and provisions with the first named agreement marked Exhibit No. 1.

V

In the absence of the agreements referred to in paragraph IV above, plaintiff would be entitled to collect the full lawful tariff rate on file with the Interstate Commerce Commission on shipments of defendant's property moving for its account over plaintiff's non-land-grant mileage and that of its connections applying via the route of actual movement; but, under and by virtue of the agreements aforesaid, plaintiff (and the other carriers parties thereto and their connections, which had substantially similar agreements with the defendant) agreed, subject to named conditions and exceptions (none of which are pertinent here) to accept, and defendant agreed to pay, for the transportation of the property of defendant shipped for its account over plaintiff's non-land-grant mileage and that of its connections the lowest net rate lawfully available to defendant, which net rate was to be computed by deducting allowances account of land-grant mileage from the lawful tariff rate on file with the Interstate Commerce Commission applying via a reasonably available and practical route over which the shipments would normally move in the absence of the agreements aforesaid.

[fol. 5] VI

While said agreements referred to in paragraph IV above were in full force and effect from July 13, 1934, to September 15, 1934, both inclusive, the Federal Surplus Relief Corporation, a non-stock, non-profit corporation organized and existing under the laws of the State of Delaware and created as an agency of defendant, the United States of America,

under authority granted the President by the provisions of paragraph (b) of section 2, and subsection (a) of section 201 of the National Industrial Recovery Act, approved June 16, 1933, and recognized and continued as an agency of the United States by various subsequent Congressional enactments, such as section 6 of Public No. 142, 73d Congress, approved April 7, 1934, 48 Stat. 528; Public No. 440, 74th Congress, approved February 11, 1936, 49 Stat. 1109, 1118; Public No. 739, 74th Congress, approved June 22, 1936, 49 Stat. 1597, 1648; Public No. 165, 75th Congress, approved June 28, 1937, 50 Stat. 323; and Public No. 430, 75th Congress, approved February 16, 1938, 52 Stat. 31 (the name of the corporation having been changed to "Federal Surplus Commodities Corporation" on November 18, 1935) shipped as consignor and duly authorized agent of defendant and for defendant's account over lines of plaintiff and its connections 147 shipments of livestock, the property of defendant, from points in Minnesota, Kansas, Illinois, Iowa, Missouri, Wisconsin and Nebraska, to points in North Carolina, South Carolina, Georgia, Tennessee and Virginia. Plaintiff transported and delivered each of said shipments in accordance with Uniform Live Stock Contract covering, but has not been paid the full amount of its lawful charges, as is fully shown hereinafter.

[fol. 6] VII

The said Corporation, in making the shipments aforesaid, acted in pursuance of circular issued by Harry L. Hopkins, Administrator, Federal Emergency Relief Administration, dated June 27, 1934, setting out the functions of the said Corporation in the receipt, shipment and disposition of the livestock involved in the shipments aforesaid. A copy of said circular, marked Exhibit No. 3, is hereto attached and made a part hereof.

VIII

The number of plaintiff's bill which was presented to said Corporation on each shipment, on defendant's standard Form No. 1068 entitled "Public Voucher for Transportation of Freight or Express," which bill showed, among other things, as to each shipment the class, weight, gross and net rates, together with computation showing the total amount claimed; the date of each uniform livestock contract; defendant's number of such contract; the origin of

each shipment; the destination thereof; the charges assessed; the charges paid; and the balance due, are shown on Exhibit No. 4, hereto attached and made a part hereof.

IX

Each of said shipments moved on a Uniform Live Stock Contract, wherein said Corporation was consignor; and, upon arrival at destination, there was attached thereto a rider reading in part:

"Property of the Federal Government

Carriers' charges to be collected from the Federal Surplus Relief Corporation, Washington, D. C., in the [fol. 7] same manner as if under a Government Bill of Lading.

Instructions for Billing:

1. Consignee should pay no charges on this shipment. 2. Charges to be billed to the Dept. or Estab. and Bu. or Service named above on authorized Government voucher form, attaching this bill of lading as supporting paper."

Each of the Uniform Live Stock Contracts, with the rider aforesaid attached, covering the shipments set forth in said Exhibit No. 4, is in the possession of the General Accounting Office, but there is attached hereto and made a part hereof a sample copy of the Uniform Live Stock Contract prescribed by the Interstate Commerce Commission and adopted by carriers in Official, Southern, Western and Illinois Classification Territories, March 15, 1922, as amended August 1, 1930, marked Exhibit No. 5, which contract is identical in terms and provisions with the Uniform Live Stock Contracts on which the shipments here involved moved. There is also attached hereto and made a part hereof a sample copy of the rider above referred to, marked Exhibit No. 6.

X

In pursuance of instructions contained in the rider set forth in paragraph IX above, plaintiff presented to the said Corporation, an agency of defendant as aforesaid, the Uniform Live Stock Contract covering each of said shipments,

together with the freight voucher on authorized Government form. In due course, on each of said shipments said Corporation on behalf of defendant paid plaintiff a portion [fol. 8] of the lawfully assessed charges less deductions on account of suspensions by the General Accounting Office, if any; the amount of said payments in each case being based by defendant upon the computation of a rate via a grossly unreasonable and impractical route via which plaintiff had not agreed to equalize the rate. The route via which plaintiff computed the charges in each case was a reasonable and practical route and the one via which plaintiff had agreed by virtue of the Freight Land-Grant Equalization Agreements hereinbefore referred to and made a part hereof, to equalize the rate. The difference between the charges paid as aforesaid and the charges assessed as aforesaid, all as shown in each case on said Exhibit No. 4, constitute the undercharges here sued for; and defendant has refused to pay any sum in excess of that shown in Exhibit No. 4 as having been paid.

XI

Item No. 115 of said Exhibit No. 4 was the subject of a petition filed with the General Accounting Office on May 22, 1939, by plaintiff, wherein it was prayed that its disallowance of plaintiff's supplemental bill covering disallowances on original bill by said Corporation be reconsidered. On June 17, 1940, the Comptroller General handed down his decision denying the prayer of the petition.

Item No. 115 aforesaid is typical of the remaining items listed in said Exhibit No. 4, and the purpose of the petition herein referred to was to secure an authoritative ruling from the Comptroller General which could be used by plaintiff as a basis for determining such further action as might to it seem advisable.

[fol. 9]

XII

No action, except as stated, has been taken by the Congress or by any department of the Government of the United States, and plaintiff is justly entitled to the amount claimed from defendant after allowing all just credits and set-offs.

Plaintiff was the last or delivering carrier of each of the shipments shown on said Exhibit No. 4, and as such is the sole owner of the claim set forth in this petition, although if plaintiff recovers herein it will as to certain

of the items, in accordance with its arrangements with its connections and established bases of interline settlements, pay them a sum equal to their proportion of the undercharges recovered; plaintiff has made no assignment or transfer of the claims set forth in this petition, or any part thereof or any interest therein; plaintiff has at all times through its officers and agents borne true allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted or given encouragement to rebellion against the said Government.

Plaintiff believes the facts stated in this petition to be true.

XIII

Wherefore plaintiff is entitled to recover the undercharges aforesaid in the sum of $9,896.90.

For a Second Cause of Action

XIV

Plaintiff repeats and realleges each and every allegation contained in Paragraphs I to V hereof, both inclusive, with the same force and effect as if they were here again set forth in full.

[fol. 10]

XV

While the agreements referred to in paragraph IV above were in full force and effect and from July 24, 1934, to February 17, 1938, both inclusive, various consignors, upon the authority of defendant and at its direction and for its account, shipped over plaintiff's lines of railway and those of its connections two hundred and twenty-seven (227) shipments of property of defendant, destined to various points on plaintiff's lines of railway and consigned to various consignees. Plaintiff transported and delivered each of said shipments in accordance with the bill of lading contract covering, but has not been paid the full amount of its lawful charges, as is fully shown hereinafter.

XVI

Each of said shipments moved on a standard Government Bill of Lading which named the Tennessee Valley Authority, an agency of defendant created by Act of Con-

gress (Public No. 17, 73d Congress, approved May 18, 1933, 48 Stat. 58) on the face thereof as the Department or Establishment and Bureau or Service to which the charges were to be billed, and each such bill of lading is in the possession of the General Accounting Office. A copy of the standard Government Bill of Lading marked Exhibit No. 7, is attached hereto and made a part hereof, which is identical in terms and provisions with the standard Government Bills of Lading on which the shipments here involved moved.

XVII

The number of plaintiff's bill which was presented to said Corporation on each shipment, on defendant's stand- [fol. 11] ard Form No. 1068 entitled "Public Voucher for Transportation of Freight or Express," which bill showed, among other things, as to each shipment the class, weight, gross and net rates, together with computation showing the total amount claimed; the date of each bill of lading; defendant's number of each such bill; the origin of each shipment; the destination thereof; the charges assessed; the charges paid; and the balance due, are shown on Exhibit No. 8, hereto attached and made a part hereof.

XVIII

In and by said standard Government Bills of Lading, defendant agreed as to each of said shipments in part as follows:

"General Conditions and Instructions

Conditions

"It is mutually agreed and understood between the United States and carriers who are parties to this bill of lading that—

"1. Prepayment of charges shall in no case be demanded by carrier, nor shall collection be made from consignee. On presentation to the office indicated on the face hereof of this bill of lading, properly accomplished, attached to freight voucher prepared on the authorized Government form, payment will be made to the last carrier, unless otherwise specifically stipulated."

Said Bills of Lading further provided:

"Instructions for Billing: 1. Consignee should pay [fol. 12] no charges on this shipment. 2. Charges to be billed to the Department or Establishment and Bureau or Service named above on authorized Government voucher form, attaching this bill of lading as supporting paper."

XIX

In pursuance of the agreement between plaintiff and defendant, as evidenced by the excerpt from the standard Government Bill of Lading set out in paragraph XVIII above, plaintiff presented to the Tennessee Valley Authority, an agency of defendant as aforesaid, and named on the face of each bill of lading covering the shipments aforesaid, each of the bills of lading, together with its freight voucher, prepared on authorized Government form. In due course, on each of said shipments on which charges were billed as aforesaid, Tennessee Valley Authority, for and on behalf of defendant, or defendant by direct settlement through the General Accounting Office, paid plaintiff a portion of the lawfully assessed charges on each of said shipments, the amount of said payments in each case being based by defendant upon the computation of a rate via a grossly unreasonable and impractical route via which plaintiff had not agreed to equalize the rate. The route via which plaintiff computed the charges in each case was a reasonable and practical route and the one via which plaintiff had agreed by virtue of the Freight Land-Grant Equalization agreements hereinbefore referred to and made a part hereof, to equalize the rate. The differences between the charges paid as aforesaid and the charges assessed as aforesaid, all as shown in each case on said Exhibit No. 8, constitute the undercharges here sued for; and defendant has refused to [fol. 13] pay any sum in excess of that shown on said Exhibit No. 7 as having been paid.

XX

Items 39, 67, 68, 69, 70, 71, 72, 73, 74 and 169 of said Exhibit No. 8 were the subject of a petition filed by plaintiff on January 26, 1937, with the General Accounting Office, wherein it was prayed that its disallowances of

plaintiff's supplemental bill covering disallowances on original bill by Tennessee Valley Authority be reconsidered. On June 1, 1939, the Comptroller General handed down his decision denying the prayer of the petition.

Items Nos. 39, 67, 68, 69, 70, 71, 72, 73, 74 and 169 aforesaid are typical of the remaining items listed in said Exhibit No. 8, and the purpose of the petition herein referred to was to secure an authoritative ruling from the Comptroller General which could be used by plaintiff as a basis for determining such further action as might to it seem advisable.

XXI

No action, except as stated, has been taken by the Congress or by any department of the Government of the United States, and plaintiff is justly entitled to the amount claimed from defendant after allowing all just credits and set-offs.

Plaintiff was the last or delivering carrier of each of the shipments shown on said Exhibit No. 8, and as such is the sole owner of the claim set forth in this petition, although if plaintiff recovers herein it will as to certain of the items, in accordance with its arrangements with its [fol. 14] connections and established bases of interline settlements, pay them a sum equal to their proportion of the undercharges recovered; plaintiff has made no assignment or transfer of the claim set forth in this petition, or any part thereof or any interest therein; plaintiff has at all times through its officers and agents borne true allegiance to the Government of the United States and has not in any way voluntarily aided, abetted or given encouragement to rebellion against the said Government.

Plaintiff believes the facts stated in this petition to be true.

XXII

Wherefore plaintiff is entitled to recover the undercharges aforesaid in the sum of $1,517.21.

For a Third Cause of Action

XXIII

Plaintiff repeats and realleges each and every allegation contained in paragraphs I to V hereof, both inclusive, with

the same force and effect as if they were here again set forth in full.

XXIV

While the agreements referred to in paragraph IV above were in full force and effect, and from December 29, 1934, to October 27, 1938, both inclusive, defendant through certain of its executive and administrative departments and divers persons acting for and in its behalf, and at its direction and for its account, shipped over plaintiff's lines of railway and those of its connections thirty-five (35) [fol. 15] shipments of property of defendant destined to various points on plaintiff's lines of railway, consigned to certain of defendant's executive or administrative departments, or to various persons acting on its behalf and at its direction. Plaintiff transported and delivered each of said shipments in accordance with the bill of lading contract covering, but has not been paid the full amount of its lawful charges, as is fully shown hereinafter.

XXV

Each of said shipments moved on standard Government Bill of Lading, and each such bill of lading is in the possession of the General Accounting Office. A copy of said standard Government Bill of Lading, marked Exhibit No. 7, has been attached hereto and made a part hereof, as is alleged in paragraph XVI above, which said copy is identical in terms and provisions with the standard Government Bills of Lading on which the shipments here involved moved.

XXVI

The number of plaintiff's bill which was presented to said Corporation on each shipment, on defendant's standard Form No. 1068 entitled "Public Voucher for Transportation of Freight or Express," which bill showed, among other things, as to each shipment the class, weight, gross and net rates, together with computation showing the total amount claimed; the date of each bill of lading; defendant's number of each such bill; the charges assessed; the charges paid; and the balance due, are shown on Exhibit No. 9 hereto attached and made a part hereof.

[fol. 16]

XXVII

In and by said standard Government Bills of Lading, defendant agreed as to each of said shipments in part as follows:

"General Conditions and Instructions

Conditions

"It is mutually agreed and understood between the United States and carriers who are parties to this bill of lading that—

"1. Prepayment of charges shall in no case be demanded by carrier, nor shall collection be made from consignee. On presentation to the office indicated on the face hereof of this bill of lading, properly accomplished, attached to freight voucher prepared on the authorized Government form, payment will be made to the last carrier, unless otherwise specifically stipulated."

Said Bill of Lading further provided:

"Instructions for Billing: 1. Consignee should pay no charges on this shipment. 2. Charges to be billed to the Department or Establishment and Bureau or Service named above on authorized Government voucher form, attaching this bill of lading as supporting paper."

XXVIII

In pursuance of the agreement between plaintiff and defendant as evidenced by excerpt from standard Government Bill of Lading set out in paragraph XXVII above, plaintiff in each case presented to the Department or Es-
[fol. 17] tablishment and Bureau or Service named on the face of each bill of lading covering the shipments aforesaid, each of the bills of lading, together with its freight voucher prepared on authorized Government form. In due course on each of said shipments on which charges were billed as aforesaid, defendant paid plaintiff a portion of the lawfully assessed charges less deductions on account of suspensions by the General Accounting Office, if any, on each of said shipments, the amount of said payments in each case being based by defendant upon the computation of a rate via

a grossly unreasonable and impractical route, via which plaintiff had not agreed to equalize the rate. The route via which plaintiff computed the charges in each case was a reasonable and practical route and the one via which plaintiff had agreed by virtue of the Freight Land-Grant Equalization agreements hereinbefore referred to and made a part hereof, to equalize the rate. The differences between the charges paid as aforesaid and the charges assessed as aforesaid, all as shown in each case on said Exhibit No. 9, constitute the undercharges here sued for; and defendant has refused to pay any sum in excess of that shown on Exhibit No. 9 as having been paid.

XXIV

No action, except as stated, has been taken by the Congress or by any department of the Government of the United States, and plaintiff is justly entitled to the amount claimed from defendant after allowing all just credits and set-offs.

Plaintiff was the last or delivering carrier of each of the shipments shown on said Exhibit No. 9, and as such [fol. 18] is the sole owner of the claim set forth in this petition, although if plaintiff recovers herein it will as to certain of the items, in accordance with its arrangements with its connections and established bases of interline settlements, pay them a sum equal to their proportion of the undercharges recovered; plaintiff has made no assignment or transfer of the claim set forth in this petition, or any part thereof or any interest therein; plaintiff has at all times through its officers and agents borne true allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted or given encouragement to rebellion against the said Government.

Plaintiff believes the facts stated in this petition to be true.

XXX

Wherefore plaintiff is entitled to recover the undercharges aforesaid in the sum of $413.17.

XXXI

By virtue of the allegations contained in the first, second and third causes of action herein, plaintiff prays judgment against the United States in the aggregate amount of

$11,827.28, with interest, together with the costs and disbursements of this action, and for such other relief as to the court may seem just.

Hamilton & Hamilton, Union Trust Building, Washington, D. C., Attorneys for plaintiff.

[fol. 19] *Duly sworn to by W. H. Luckett. Jurat omitted in printing.*

[fol. 20] EXHIBIT No. 1 TO PETITION

Southern Railway System

Office of Vice President

In Charge of Traffic

Washington, D. C.

E. R. Oliver
Vice-President

November 29, 1933. c
32937—

FREIGHT LAND-GRANT EQUALIZATION AGREEMENT

The Quartermaster General, War Department, Washington, D. C.

SIR:

1. The following carriers:

Southern Railway Company hereinafter called these carriers, hereby agree, subject to the conditions and exceptions stated below, to accept for the transportation of property shipped for account of the Government of the United States and for which the Government of the United States is lawfully entitled to reduced rates over land-grant roads, the lowest net rates lawfully available, as derived through deductions account of land-grant distance from the lawful rates filed with the Interstate Commerce Commission applying from point of origin to destination at time of movement.

2. Conditions—

(a) On traffic destined to and/or received from points on lines of other carriers this agreement will only apply in connection with such carriers as have an agreement

of the form stated in paragraph 1 above on file with the [fol. 21] Quartermaster General, War Department, Washington, D. C., except as otherwise provided under the heading of Exceptions in paragraph 3 below.

* * * * * * *

4. This agreement becomes effective December 1, 1933 and remains in effect until January 1, 1935, and thereafter from year to year unless these carriers file notice of withdrawal or change with The Quartermaster General, War Department, Washington, D. C., at least sixty days prior to the beginning of any calendar year.

5. This agreement cancels all previous equalization agreements, if any, on freight traffic filed by these carriers.

Respectfully submitted, Southern Railway Company,
E. R. Oliver, Vice-President.

Accepted for The Quartermaster General:
By: R. E. Shannon, Capt., Q.M.C., Ass't.

Date: December 5, 1933.

[fol. 22] EXHIBIT NO. 2 TO PETITION

Southern Railway System
Office of Vice President
In Charge of Traffic
Washington, D. C.

April 1, 1938. c
32937

FREIGHT LAND-GRANT EQUALIZATION AGREEMENT

The Quartermaster General, War Department, Washington, D. C.

SIR:

1. The following carriers:

Southern Railway Company hereinafter called these carriers, hereby agree, subject to the conditions and exceptions stated below, to accept for the transportation of property

shipped for account of the Government of the United States and for which the Government of the United States is lawfully entitled to reduced rates over land-grant roads, the lowest net rates lawfully available, as derived through deductions account of land-grant distance from lawful rates filed with the Interstate Commerce Commission or the various State Commissions applying from point of origin to destination at time of movement.

2. Conditions—

(a) On traffic destined to and/or received from points on lines of other carriers this agreement will only apply in connection with such carriers as have an agreement of the form stated in paragraph 1 above on file with The Quartermaster General, War Department, [fol. 23] Washington, D. C., except as otherwise provided under the heading of Exceptions in paragraph 3 below.

* * * * * * * *

4. This agreement becomes effective May 1st, 1938 and remains in effect until January 1, 1939, and thereafter from year to year unless these carriers file notice of withdrawal or change with The Quartermaster General, War Department, Washington, D. C., at least sixty days prior to the beginning of any calendar year.

5. This agreement cancels all previous equalization agreements, if any, on freight traffic filed by these carriers.

Respectfully submitted, Southern Railway Company,
E. R. Oliver, Vice-President.

Accepted for The Quartermaster General:
By: Wilbur S. Elliott, Major, Q. M. Corps, Ass't.

Date: April 25, 1938.

[fol. 24] EXHIBIT No. 3 TO PETITION

Federal Emergency Relief Administration

Washington, D. C.

To All State Emergency Relief Administrations:

June 27, 1934.

PROCEDURE IN DROUGHT AREAS

* * * * * * *

Item 4. *Livestock Operations in Emergency Drought Counties.*

Livestock buying operations will be conducted by the Drought Relief Service (AAA) in Emergency Drought Counties and will classify stock for (a) condemnation and destruction on the farms, and (b) for donation to the Federal Surplus Relief Corporation. The functions of States Relief Administrations in drought areas are outlined in Section II below. The functions of the Federal Surplus Relief Corporation in the receipt and disposition of the donated livestock are set forth below in Section III.

* * * * * * *

Section III—Livestock Operations

Item 1. *Livestock Purchases.*

The purchase of livestock, i. e., cattle, in emergency drought counties will be carried on by the Drought Relief Service (AAA).

Cattle purchased by the Drought Relief Service (AAA) will be classified for disposition as follows:

a. Condemned for immediate slaughter and disposition on the farm.

b. Designated as fit for food or for redistribution and donated to Federal Surplus Relief Corporation.

[fol. 25] Item 3. *Functions of Federal Surplus Relief Corporation.*

a. The Federal Surplus Relief Corporation field operations are in charge of Mr. M. T. Morgan, Special

Representative, FSRC, University Farms, St. Paul, Minnesota. Any questions relating to the disposition and transportation of cattle should be referred immediately to Mr. Morgan who is acting under general instructions from Washington and in close cooperation with the Drought Relief Service (AAA). FSRC will take title to and give proper receipt for all cattle donated for relief purposes as provided under Item 1-b above.

Item 4. *Disposition of Cattle.*

After cattle have been concentrated at the point or points selected by the FSRC agent, their disposition will be determined by him in the following manner:

a. An opportunity will be afforded the State Emergency Relief Administration representative to take cattle in any classification (X, Bar or Unmarked). This should not, however, be a selection of the best animals in these classes, but an indication of the number desired in each class and delivery by the FSRC agent to the State representative on the basis of selection by the FSRC agent. It should be borne in mind by FSRC agents that all cattle shipped for the account of the Corporation must travel considerable distances, and in many cases it will be desirable to keep the poorer animals for processing under state programs where the haul will be short, and poorer animals will be more likely to survive than if they were shipped for the account of FSRC. Receipt will be taken on the Weekly Disposition Report for all cattle delivered to the State Relief Administration representative. In the case of cattle to be shipped for the account of FSRC, either for redistribution in other states, or for [fol. 26] processing in plants having contracts with FSRC, immediate report will be made by the FSRC agent to Mr. Morgan at St. Paul indicating the number of cattle and calves available for loading by classes as above (X, Bar and Unmarked). Further and more explicit instructions concerning shipments will be issued by Mr. Morgan.

c. Mr. Morgan may exercise discretion in the issuance of shipping instructions for the cattle, disregarding

classification if necessary in particular instances. Wherever practicable, however, he will ship cattle in accordance with their classification. All cattle to be shipped by the FSRC agent under instructions from Mr. Morgan, for redistribution or grazing, will be covered by FSRC Form 10, submitted by the Relief Administration for the State *of destination.* These Forms 10 will be sent to Mr. Morgan at St. Paul, who will fill them by issuing necessary shipping instructions to FSRC agents in the several counties, after receipt by him of notice from such agents that the proper classes of cattle are available for shipment. All cattle for processing in FSRC contractor's plants will be allocated by Mr. Morgan to the several markets on the basis of reports of availability for shipment from FSRC agents in the counties, and from lists of FSRC contracts supplied from Washington. FSRC Form 10 will not be used for this purpose.

Item 5. *Point of Acceptance.*

Title to and physical acceptance of cattle tendered by the Drought Relief Service (AAA) will be made by FSRC at railroad stations where holding yards are available or at such other point as may be designated by the FSRC agent. Notwithstanding that cattle may not be accepted by FSRC until arrival at railroad stations it will be the responsibility and expense of the State Relief Administra- [fols. 27-28] tions, acting through their local or county relief administrations, to provide any necessary physical care for cattle during the period after purchase and until loaded on cars at railroad stations.

Item 7. *Redistribution plan.*

Disposition of cattle designated as fit for redistribution as subsistence stock will be made as follows:

a. Cattle for processing and redistribution within the state will be handled as outlined in Item 4-a, above.

b. Other redistribution of subsistence stock moving outside the state of purchase will be carried out by FSRC under instructions for transportation issued by Mr. Morgan to designated states in which rural rehabilitation programs are under way. Requisition for

subsistence stock will be made by State Relief Administrations in such states upon FSRC, giving full details as to number of cattle which can be distributed within the designated state to farmers on relief and needing subsistence stock. Such requisitions must be made on FSRC Form 10 and must carry all information as to number of cattle, point of destination, etc., necessary to issuance of complete shipping instructions and bills of lading, and the State Relief Administrations must certify that all arrangements are in order for proper receipt and care of such subsistence stock upon arrival at destination points.

Harry L. Hopkins, Administrator.

(Here follow 3 photolithographs, side folios 29, 30, 30a)

EXHIBIT No. 4 TO PETITION

Statement of amounts due by Federal Surplus Relief Corporation, covering deductions or disallowances made in the settlement of freight charges on various shipments listed below

Item	Bill	Bill of Lading		Origin	Destination	Charges	Paid	Balance
1	F-3532	342	7/23/34	National Stock Yds..Ill.	Davidson Riv..N.C.	$373.01	$338.55	$34.46
2	3533	765	7/22/34	Sioux City, Iowa	Ridge Springs,S.C.	251.20	218.77	32.43
3	3535	1039	7/22/34	National Stock Yds..Ill.	Clyde, N.C.	466.26	400.96	65.30
4	3537	1041	7/19/34	So.St.Paul,Minn.	Clyde, N.C.	121.50	114.37	7.13
5	3538	1042	7/19/34	So.St.Paul,Minn.	Clyde, N.C.	129.64	120.42	9.22
6	3539	1041	7/19/34	So.St.Paul,Minn.	Clyde, N.C.	516.90	453.06	65.84
7	3541	724	7/20/34	National Stock Yds..Ill.	Clyde, N.C.	365.01	326.37	38.64
8	3565	962	7/26/34	Wichita, Kansas	Lumber City,Ga.	724.66	640.90	83.76
9	3575	133	7/21/34	So.St.Paul,Minn.	Ninety Six, S.C.	1,278.83	1,080.88	197.95
10	3577	1042	7/20/34	So.St.Paul,Minn.	Asheville, N.C.	532.07	453.56	78.51
11	3578	518	7/20/34	Minn.Transfer,Minn.	Asheville, N.C.	295.31	266.76	28.55
12	3579	1042	7/20/34	So.St.Paul,Minn.	Clyde, N.C.	527.15	450.21	76.94
13	3580	1042	7/20/34	So.St.Paul,Minn.	Asheville, N.C.	532.18	494.35	37.83
14	3581	519	7/20/34	Minn.Transfer,Minn.	Asheville, N.C.	2,341.05	2,140.42	200.63
15	3594	1912	8/5/34	Sioux City, Iowa	Clayton, N.C.	263.30	242.74	20.56
16	3595	1901	8/5/34	Sioux City, Iowa	Clayton, N.C.	263.30	237.16	26.14
17	3596	1625	8/1/34	So.St.Paul,Minn.	Newton, N.C.	772.89	717.39	55.50
18	3597	1081	8/1/34	U. S. Yards, Ill.	Asheville, N.C.	318.60	273.34	45.26
19	3598	1083	8/1/34	U. S. Yards, Ill.	Asheville, N.C.	424.80	383.15	41.65
20	3599	1168	8/1/34	U. S. Yards, Ill.	Asheville, N.C.	544.90	431.24	113.66
21	3600	1921	8/5/34	Sioux City, Iowa	Asheville, N.C.	941.20	863.71	77.49
22	3601	1918	8/5/34	Sioux City, Iowa	Asheville, N.C.	705.90	647.78	58.12
23	3602	1919	8/4/34	Sioux City, Iowa	Davidson Riv..N.C.	2,186.65	1,692.63	294.02
24	3663	1056	8/1/34	Chicago, Ill.	Clyde, N.C.	1,274.40	1,077.78	196.62
25	3665	2645	8/8/34	Kansas City, Mo.	Lumber City, Ga.	672.98	604.82	68.16
26	3667	1043	7/30/34	Chicago, Ill.	Sylva, N.C.	866.80	792.72	74.08
27	3669	3173	8/14/34	So.St.Paul,Minn.	Columbia, S.C.	777.01	676.31	98.70
28	3671	1030	8/7/34	So.St.Paul,Minn.	Columbia, S.C.	259.00	226.10	32.90
29	3672	1120	8/7/34	So.St.Paul,Minn.	Columbia, S.C.	259.00	226.10	32.90
30	3683	340	7/20/34	E.St.Louis,Ill.	Waynesville,N.C.	196.65	175.63	20.82
31	3689	517	7/30/34	Chicago, Ill.	Marshall, N.C.	525.63	443.38	82.25
32	3726	1914	8/5/34	Sioux City, Iowa	Princeton,N.C.	263.30	243.38	19.92
33	3727	984	7/26/34	So.St.Paul,Minn.	Chappell,S.C.	647.51	562.41	85.10
34	3730	3167	8/16/34	Milwaukee, Wis.	York, S.C.	783.95	629.30	154.65
35	3742	1082	8/1/34	Chicago, Ill.	Clayton, N.C.	363.75	306.47	57.28
36	3743	1909	8/5/34	Sioux City, Iowa	Princeton,N.C.	394.95	365.06	29.89
37	3744	1774	8/12/34	So.St.Paul,Minn.	York, S.C.	892.52	776.84	115.68
38	3745	2614	8/13/34	So.Omaha, Neb.	York, S.C.	1,920.49	1,542.51	377.98
39	3746	2613	8/13/34	So.Omaha, Neb.	York, S.C.	1,864.79	1,524.23	340.56
40	3747	3166	8/21/34	Milwaukee, Wis.	York, S.C.	835.56	669.93	165.63
41	3691	3224	8/14/34	Minn.Transfer,Minn.	University,N.C.	266.50	265.49	21.01
42	3692	1915	8/5/34	Sioux City, Iowa	Wilson Mills,N.C.	266.40	246.11	20.29
43	3693	1907	8/5/34	Sioux City, Iowa	Princeton, N.C.	658.25	594.17	64.08
44	3694	3465	8/20/34	New Brighton, Minn.	Asheville, N.C.	1,244.65	1,082.25	162.40
45	4219	732	7/22/34	National Stock Yds..Ill.	Goldsboro, N.C.	104.55	95.02	9.53
46	4220	2630	8/14/34	Minn.Transfer,Minn.	Union, S.C.	126.96	110.11	16.85
47	4221	2631	8/14/34	Minn.Transfer,Minn.	Union, S.C.	126.96	110.11	16.85
48	4222	2633	8/15/34	So.St.Paul,Minn.	Union, S.C.	885.52	767.54	117.98
49	4223	2629	8/14/34	So.St.Paul,Minn.	Union, S.C.	379.51	328.95	50.56
50	4224	2632	8/14/34	Minn.Transfer,Minn.	Union, S.C.	309.72	267.08	42.64
51	4225	3159	8/15/34	So.St.Paul, Minn.	Newberry, S.C.	388.51	338.49	50.02
52	4227	2624	8/15/34	So.St.Paul, Minn.	Rockton, S.C.	652.51	581.86	70.65
53	4228	2625	8/15/34	So.St.Paul, Minn.	Ridgeway, S.C.	1,044.02	915.22	128.80
54	4230	750	7/22/34	Sioux City, Iowa	Johnston, S.C.	251.30	218.15	33.15
55	4232	1756	8/8/34	Sioux City, Iowa	Jedburg, S.C.	385.95	338.69	47.26
56	4234	3486	8/23/34	West Chicago, Ill.	Shouns, Tenn.	227.20	209.10	18.10
57	4356	3381	8/22/34	New Brighton, Minn.	Broadnax, Va.	148.81	135.60	13.21
58	4359	1040	7/22/34	National Stock Yds..Ill.	Goldsboro, N.C.	1,052.52	953.14	99.38
59	4360	339	8/22/34	Milwaukee, Wis.	Asheville, N.C.	610.50	480.91	129.59
60	4361	3325	8/2/34	So.St.Paul, Minn.	Asheville, N.C.	1,093.52	958.41	135.11
61	4362	3464	8/21/34	So.St.Paul, Minn.	Pisgah Forest,N.C.	2,223.03	2,067.74	155.29
62	4363	3324	8/16/34	New Brighton, Minn.	Pisgah Forest,N.C.	2,111.78	1,838.06	273.72
63	4618	1089	8/31/34	So.St.Paul, Minn.	Taylorsville,N.C.	127.50	118.75	8.75
64	4619	1088	8/21/34	So.St.Paul, Minn.	Taylorsville,N.C.	382.51	356.28	26.23

Item	Bill	Bill of Lading		Origin
75	4635	3416	8/26/34	So.St.Paul, Minn.
76	4636	3412	8/26/34	So.St.Paul, Minn.
77	4637	191	7/16/34	Kansas City, Mo.
78	4640	4562	9/8/34	New Brighton, Minn.
79	4641	4590	9/10/34	New Brighton, Minn.
80	4642	4156	9/2/34	So.St.Paul, Minn.
81	4643	3586	8/26/34	New Brighton, Minn.
82	4817	4508	9/9/34	New Brighton, Minn.
83	4818	4511	9/11/34	New Brighton, Minn.
84	4819	4510	9/11/34	New Brighton, Minn.
85	4855	3319	8/16/34	So.St.Paul, Minn.
86	4856	3470	8/24/34	So.St.Paul, Minn.
87	4857	3713	8/27/34	New Brighton, Minn.
88	4858	1772	8/6/34	Sioux City, Iowa
89	4861	3155	8/16/34	Sioux City, Iowa
90	4876	3322	8/16/34	So.St.Paul, Minn.
91	4877	4566	9/11/34	New Brighton, Minn.
92	4878	767	7/23/34	New Brighton, Minn.
93	4880	1024	7/26/34	So.St.Paul, Minn.
94	4882	1162	8/3/34	So.St.Paul, Minn.
95	4883	785	7/23/34	New Brighton, Minn.
96	4884	3375	8/20/34	New Brighton, Minn.
97	4885	764	7/13/34	New Brighton, Minn.
98	4886	706	7/23/34	New Brighton, Minn.
99	4887	3164	8/20/34	Milwaukee, Wis.
100	4889	3733	8/24/34	New Brighton, Minn.
101	4890	4525	9/10/34	So.St.Paul, Minn.
102	4891	4537	9/10/34	So.St.Paul, Minn.
103	4894	4544	9/13/34	So.St.Paul,Minn.
104	4895	1319	7/31/34	So.St.Paul,Minn.
105	5212	4131	9/4/34	New Brighton,Minn.
106	5213	3467	8/21/34	So.St.Paul, Minn.
107	5228	3354	8/23/34	So.St.Paul, Minn.
108	5229	3351	8/23/34	So.St.Paul, Minn.
109	5230	337	8/22/34	So.St.Paul, Minn.
110	5231	1046	8/31/34	So.St.Paul, Minn.
111	5232	1065	8/31/34	So.St.Paul, Minn.
112	5549	4719	9/15/34	New Brighton,Minn.
113	5550	3347	9/1/34	So.St.Paul, Minn.
114	5551	3553	8/25/34	New Brighton, Minn.
115	5552	4568	9/10/34	New Brighton, Minn.
116	5553	4591	9/15/34	New Brighton, Minn.
117	5554	3469	8/21/34	So.St.Paul, Minn.
118	5555	516	7/20/34	E.St.Louis, Ill.
119	5556	115	7/17/34	So.St.Paul, Minn.
120	5706	3194	8/14/34	So.St.Paul, Minn.
121	5836	3321	8/16/34	So.St.Paul, Minn.
122	5696	3560	8/25/34	New Brighton, Minn.
123	5697	3737	8/29/34	New Brighton, Minn.
124	5898	3576	8/22/34	New Brighton, Minn.
125	5900	1045	8/31/34	So.St.Paul, Minn.
126	5966	127	7/20/34	Sioux City, Iowa
127	6093	128	7/20/34	Sioux City, Iowa
128	6094	996	7/27/34	So.St.Paul, Minn.
129	6216	4590	9/10/34	New Brighton, Minn.
130	6259	3350	8/23/34	So.St.Paul, Minn.
131	6260	3474	8/21/34	So.St.Paul, Minn.
132	6261	3471	8/21/34	So.St.Paul, Minn.
133	6262	3472	8/21/34	So.St.Paul, Minn.
134	6263	3558	8/25/34	New Brighton, Minn.
135	6264	1047	8/30/34	So.St.Paul, Minn.
136	6265	1048	8/30/34	So.St.Paul, Minn.
137	6275	4155	9/4/34	So.St.Paul, Minn.
138	6464	3468	8/24/34	So.St.Paul, Minn.
139	6467	127	7/20/34	Sioux City, Iowa

deductions or disallowances made in the settlement of freight charges on various shipments listed below

Item	Bill	Bill of Lading		Origin	Destination	Charges	Paid	Balance
1	-3532	342	7/23/34	National Stock Yds..Ill.	Davidson Riv..N.C.	$373.01	$338.55	$34.46
2	3533	765	7/22/34	Sioux City, Iowa	Ridge Springs,S.C.	251.20	218.77	32.43
3	3535	1039	7/22/34	National Stock Yds..Ill.	Clyde, N.C.	466.26	400.96	65.30
4	3537	1041	7/19/34	So.St.Paul.Minn.	Clyde, N.C.	121.50	114.37	7.13
5	3538	1042	7/19/34	So.St.Paul.Minn.	Clyde, N.C.	129.64	120.42	9.22
6	3539	1041	7/19/34	So.St.Paul.Minn.	Clyde, N.C.	518.90	453.06	65.84
7	3541	724	7/20/34	National Stock Yds..Ill.	Clyde, N.C.	365.01	326.37	38.64
8	3565	962	7/26/34	Wichita, Kansas	Lumber City,Ga.	724.66	640.90	83.76
9	3575	133	7/21/34	So.St.Paul.Minn.	Ninety Six, S.C.	1,278.83	1,080.88	197.95
10	3577	1042	7/20/34	So.St.Paul.Minn.	Asheville, N.C.	532.07	453.56	78.51
11	3578	518	7/20/34	Minn.Transfer.Minn.	Asheville, N.C.	295.31	266.76	28.55
12	3579	1042	7/20/34	So.St.Paul.Minn.	Clyde, N.C.	527.15	450.21	76.94
13	3580	1042	7/20/34	So.St.Paul.Minn.	Asheville, N.C.	532.18	494.35	37.83
14	3581	519	7/20/34	Minn.Transfer.Minn.	Asheville, N.C.	2,341.05	2,140.42	200.63
15	3594	1912	8/5/34	Sioux City, Iowa	Clayton, N.C.	263.30	242.74	20.56
16	3595	1901	8/5/34	Sioux City, Iowa	Clayton, N.C.	263.30	237.16	26.14
17	3596	1625	8/1/34	So.St.Paul.Minn.	Newton, N.C.	772.89	717.39	55.50
18	3597	1081	8/1/34	U. S. Yards, Ill.	Asheville, N.C.	318.60	273.34	45.26
19	3598	1083	8/1/34	U. S. Yards, Ill.	Asheville, N.C.	424.80	383.15	41.65
20	3599	1168	8/1/34	U. S. Yards, Ill.	Asheville, N.C.	544.90	431.24	113.66
21	3600	1921	8/5/34	Sioux City, Iowa	Asheville, N.C.	941.20	863.71	77.49
22	3601	1918	8/5/34	Sioux City, Iowa	Asheville, N.C.	705.90	647.78	58.12
23	3602	1919	8/4/34	Sioux City, Iowa	Davidson Riv..N.C.	2,186.65	1,892.63	294.02
24	3663	1056	8/1/34	Chicago, Ill.	Clyde, N.C.	1,274.40	1,077.78	196.62
25	3665	2645	8/8/34	Kansas City, Mo.	Lumber City, Ga.	672.98	604.82	68.16
26	3667	1043	7/30/34	Chicago, Ill.	Sylva, N.C.	866.80	792.72	74.08
27	3669	3173	8/14/34	So.St.Paul.Minn.	Columbia, S.C.	777.01	676.31	98.70
28	3671	1030	8/7/34	So.St.Paul.Minn.	Columbia, S.C.	259.00	226.10	32.90
29	3672	1120	8/7/34	So.St.Paul.Minn.	Columbia, S.C.	259.00	226.10	32.90
30	3683	340	7/20/34	E.St.Louis,Ill.	Waynesville,N.C.	196.65	175.63	20.82
31	3689	517	7/30/34	Chicago, Ill.	Marshall, N.C.	525.63	443.38	82.25
32	3726	1914	8/5/34	Sioux City, Iowa	Princeton,N.C.	263.30	243.38	19.92
33	3727	984	7/26/34	So.St.Paul.Minn.	Chappell,S.C.	647.51	562.41	85.10
34	3730	3167	8/16/34	Milwaukee, Wis.	York, S.C.	763.95	629.30	154.65
35	3742	1082	8/1/34	Chicago, Ill.	Clayton, N.C.	363.75	306.47	57.28
36	3743	1909	8/5/34	Sioux City, Iowa	Princeton,N.C.	394.95	365.06	29.89
37	3744	1774	8/12/34	So.St.Paul.Minn.	York, S.C.	892.52	776.84	115.68
38	3745	2614	8/13/34	So.Omaha, Neb.	York, S.C.	1,920.49	1,542.51	377.98
39	3746	2613	8/13/34	So.Omaha, Neb.	York, S.C.	1,864.79	1,524.23	340.56
40	3747	3166	8/21/34	Milwaukee, Wis.	York, S.C.	835.56	669.93	165.63
41	3891	3224	8/14/34	Minn.Transfer.Minn.	University,N.C.	266.50	265.49	21.01
42	3892	1915	8/5/34	Sioux City, Iowa	Wilson Mills,N.C.	266.40	246.11	20.29
43	3893	1907	8/5/34	Sioux City, Iowa	Princeton, N.C.	658.25	594.17	64.08
44	3894	3465	8/20/34	New Brighton, Minn.	Asheville, N.C.	1,244.65	1,082.25	162.40
45	4219	732	7/22/34	National Stock Yds..Ill.	Goldsboro, N.C.	104.55	95.02	9.53
46	4220	2630	8/14/34	Minn.Transfer.Minn.	Union, S.C.	126.96	110.11	16.85
47	4221	2631	8/14/34	Minn.Transfer.Minn.	Union, S.C.	126.96	110.11	16.85
48	4222	2633	8/15/34	So.St.Paul.Minn.	Union, S.C.	885.52	767.54	117.98
49	4223	2629	8/14/34	So.St.Paul.Minn.	Union, S.C.	379.51	328.95	50.56
50	4224	2632	8/14/34	Minn.Transfer.Minn.	Union, S.C.	309.72	267.06	42.64
51	4225	3159	8/15/34	So.St.Paul, Minn.	Newberry, S.C.	388.51	338.49	50.02
52	4227	2624	8/15/34	So.St.Paul, Minn.	Rockton, S.C.	652.51	581.86	70.65
53	4228	2625	8/15/34	So.St.Paul, Minn.	Ridgeway, S.C.	1,044.02	915.22	128.80
54	4230	750	7/22/34	Sioux City, Iowa	Johnston, S.C.	251.30	218.15	33.15
55	4232	1756	8/8/34	Sioux City, Iowa	Jedburg, S.C.	385.95	338.69	47.26
56	4234	3486	8/23/34	West Chicago, Ill.	Shouns, Tenn.	227.20	209.10	18.10
57	4358	3361	8/22/34	New Brighton, Minn.	Broadnax, Va.	148.81	135.60	13.21
58	4359	1040	7/22/34	National Stock Yds..Ill.	Goldsboro, N.C.	1,052.52	953.14	99.38
59	4360	339	8/22/34	Milwaukee, Wis.	Asheville, N.C.	610.50	480.91	129.59
60	4361	3325	8/2/34	So.St.Paul, Minn.	Asheville, N.C.	1,093.52	958.41	135.11
61	4362	3464	8/21/34	So.St.Paul, Minn.	Pisgah Forest,N.C.	2,223.03	2,067.74	155.29
62	4363	3324	8/16/34	New Brighton, Minn.	Pisgah Forest,N.C.	2,111.78	1,838.06	273.72
63	4618	1089	8/31/34	So.St.Paul, Minn.	Taylorsville,N.C.	127.50	118.75	8.75
64	4619	1088	8/21/34	So.St.Paul, Minn.	Taylorsville,N.C.	382.51	356.28	26.23
65	4621	3555	8/29/34	New Brighton, Minn.	Kernersville,N.C.	130.80	121.82	8.98
66	4622	3554	8/25/34	New Brighton, Minn.	Rural Hall, N.C.	130.80	121.84	8.96
67	4623	3349	9/1/34	So.St.Paul, Minn.	Newton, N.C.	379.51	376.48	3.03
68	4625	4567	9/10/34	New Brighton.Minn.	Asheville, N.C.	1,600.40	1,483.96	116.44
69	4626	3348	9/1/34	So.St.Paul, Minn.	Asheville, N.C.	121.50	113.32	8.18
70	4627	4589	9/8/34	Minn.Transfer, Minn.	Clyde, N.C.	1,080.48	867.74	212.74
71	4629	4153	9/2/34	So.St.Paul, Minn.	Gaffney, S.C.	379.51	328.22	51.29
72	4631	3736	8/28/34	New Brighton, Minn.	Pacolet, S.C.	414.95	357.19	57.76
73	4633	3726	8/28/34	New Brighton, Minn.	St.Matthews,S.C.	1,865.62	1,612.57	253.05
74	4634	3141	8/14/34	Minn.Transfer.Minn.	Summerville, S.C.	281.42	243.30	38.12

Item	Bill	Bill of Lading		Origin
75	4635	3416	8/26/34	So.St.Paul, Minn.
76	4636	3412	8/26/34	So.St.Paul, Minn.
77	4637	191	7/16/34	Kansas City, Mo.
78	4640	4582	9/8/34	New Brighton, Minn.
79	4641	4590	9/10/34	New Brighton, Minn.
80	4642	4156	9/2/34	So.St.Paul, Minn.
81	4643	3586	8/26/34	New Brighton, Minn.
82	4817	4508	9/9/34	New Brighton, Minn.
83	4818	4511	9/11/34	New Brighton, Minn.
84	4819	4510	9/11/34	New Brighton, Minn.
85	4855	3319	8/18/34	So.St.Paul, Minn.
86	4856	3470	8/24/34	So.St.Paul, Minn.
87	4857	3713	8/27/34	New Brighton, Minn.
88	4858	1772	8/8/34	Sioux City, Iowa
89	4861	3155	8/16/34	Sioux City, Iowa
90	4876	3322	8/18/34	So.St.Paul, Minn.
91	4877	4586	9/11/34	New Brighton, Minn.
92	4878	767	7/23/34	New Brighton, Minn.
93	4880	1024	7/26/34	So.St.Paul, Minn.
94	4882	1162	8/3/34	So.St.Paul, Minn.
95	4883	785	7/23/34	New Brighton, Minn.
96	4884	3375	8/20/34	New Brighton, Minn.
97	4885	764	7/13/34	New Brighton, Minn.
98	4886	766	7/23/34	New Brighton, Minn.
99	4887	3164	8/20/34	Milwaukee, Wis.
100	4889	3733	8/24/34	New Brighton, Minn.
101	4890	4525	9/10/34	So.St.Paul, Minn.
102	4891	4537	9/10/34	So.St.Paul, Minn.
103	4894	4544	9/13/34	So.St.Paul.Minn.
104	4895	1319	7/31/34	So.St.Paul.Minn.
105	5212	4131	9/4/34	New Brighton.Minn.
106	5213	3467	8/21/34	So.St.Paul, Minn.
107	5228	3354	8/23/34	So.St.Paul, Minn.
108	5229	3351	8/23/34	So.St.Paul, Minn.
109	5230	337	8/22/34	So.St.Paul, Minn.
110	5231	1046	8/31/34	So.St.Paul, Minn.
111	5232	1065	8/31/34	So.St.Paul, Minn.
112	5549	4719	9/15/34	New Brighton.Minn.
113	5550	3347	9/1/34	So.St.Paul, Minn.
114	5551	3553	8/25/34	New Brighton, Minn.
115	5552	4568	9/10/34	New Brighton, Minn.
116	5553	4591	9/15/34	New Brighton, Minn.
117	5554	3469	8/21/34	So.St.Paul, Minn.
118	5555	516	7/20/34	E.St.Louis, Ill.
119	5556	115	7/17/34	So.St.Paul, Minn.
120	5706	3194	8/14/34	So.St.Paul, Minn.
121	5836	3321	8/18/34	So.St.Paul, Minn.
122	5896	3560	8/25/34	New Brighton, Minn.
123	5897	3737	8/29/34	New Brighton, Minn.
124	5898	3576	8/22/34	New Brighton, Minn.
125	5900	1045	8/31/34	So.St.Paul, Minn.
126	5966	127	7/20/34	Sioux City, Iowa
127	6093	128	7/20/34	Sioux City, Iowa
128	6094	996	7/27/34	So.St.Paul, Minn.
129	6216	4590	9/10/34	New Brighton, Minn.
130	6259	3350	8/23/34	So.St.Paul, Minn.
131	6260	3474	8/21/34	So.St.Paul, Minn.
132	6261	3471	8/21/34	So.St.Paul, Minn.
133	6262	3472	8/21/34	So.St.Paul, Minn.
134	6263	3558	8/25/34	New Brighton, Minn.
135	6264	1047	8/30/34	So.St.Paul, Minn.
136	6265	1048	8/30/34	So.St.Paul, Minn.
137	6275	4155	9/4/34	So.St.Paul, Minn.
138	6464	3468	8/24/34	So.St.Paul, Minn.
139	6467	127	7/20/34	Sioux City, Iowa
140	6799	1045	8/31/34	So.St.Paul, Minn.
141	6800	4591	9/15/34	New Brighton, Minn.
142	6801	4591	9/15/34	New Brighton, Minn.
143	6802	4568	9/10/34	New Brighton, Minn.
144	6675	3560	8/25/34	New Brighton, Minn.
145	6941	1039	7/22/34	National Stock Yds..Ill.
146	6941	725	7/22/34	National Stock Yds..Ill.
147	6941	341	7/22/34	National Stock Yds..Ill.

EXHIBIT No. 4 TO PETITION

Statement of amounts due by Federal Surplus Relief Corporation, covering deductions or disallowances made in the settlement of freight charges on various shipments listed below

Destination	Charges	Paid	Balance	Item	Bill	Bill of Lading		Origin	Destination	Charges	Paid	Balance
Davidson Riv.,N.C.	$373.01	$338.55	$34.46	75	4635	3416	8/26/34	So.St.Paul, Minn.	Cochran, Ga.	$829.84	$817.20	$12.64
Ridge Springs,S.C.	251.20	218.77	32.43	76	4636	3412	8/26/34	So.St.Paul, Minn.	Cochran, Ga.	1,555.95	1,545.99	9.96
Clyde, N.C.	466.26	400.96	65.30	77	4637	191	7/16/34	Kansas City, Mo.	Haselhurst, Ga.	711.70	676.80	34.90
Clyde, N.C.	121.50	114.37	7.13	78	4640	4582	9/8/34	New Brighton, Minn.	Princeton, N.C.	831.53	775.28	56.25
Clyde, N.C.	129.64	120.42	9.22	79	4641	4590	9/10/34	New Brighton, Minn.	Sylva, N.C.	694.29	643.24	51.05
Clyde, N.C.	516.90	453.06	65.84	80	4642	4156	9/2/34	So.St.Paul, Minn.	York, S.C.	1,402.52	1,220.73	181.79
Clyde, N.C.	365.01	326.37	38.64	81	4643	3586	8/26/34	New Brighton, Minn.	Clarksville, Va.	135.80	124.32	11.48
Lumber City,Ga.	724.66	640.90	83.76	82	4817	4508	9/9/34	New Brighton, Minn.	Brown Summit, N.C.	264.04	245.40	18.64
Ninety Six, S.C.	1,278.83	1,080.88	197.95	83	4818	4511	9/11/34	New Brighton, Minn.	Benaja, N.C.	281.60	261.14	20.46
Asheville, N.C.	532.07	453.56	78.51	84	4819	4510	9/11/34	New Brighton, Minn.	Benaja, N.C.	290.55	269.36	21.19
Asheville, N.C.	295.31	266.76	28.55	85	4855	3319	8/18/34	So.St.Paul, Minn.	Clyde, N.C.	1,579.53	1,473.14	106.39
Clyde, N.C.	527.15	450.21	76.94	86	4856	3470	8/24/34	So.St.Paul, Minn.	Clyde, N.C.	364.51	339.96	24.55
Asheville, N.C.	532.18	494.35	37.83	87	4857	3713	8/27/34	New Brighton, Minn.	Haynes, S.C.	1,116.77	958.81	157.96
Asheville, N.C.	2,341.05	2,140.42	200.63	88	4858	1772	8/6/34	Sioux City, Iowa	Greenwood, S.C.	674.39	576.02	98.37
Clayton, N.C.	263.30	242.74	20.56	89	4861	3155	8/16/34	Sioux City, Iowa	Rockton, S.C.	683.40	595.18	88.22
Clayton, N.C.	263.30	237.16	26.14	90	4876	3322	8/18/34	So.St.Paul, Minn.	Sylva, N.C.	1,111.52	1,036.95	74.57
Newton, N.C.	772.89	717.39	55.50	91	4877	4588	9/11/34	New Brighton, Minn.	Davidson River,N.C.	123.80	114.86	8.94
Asheville, N.C.	318.60	273.34	45.26	92	4878	787	7/23/34	New Brighton, Minn.	Spartanburg, S.C.	275.92	236.60	39.32
Asheville, N.C.	424.80	383.15	41.65	93	4880	1024	7/26/34	So.St.Paul, Minn.	Spartanburg, S.C.	622.51	537.46	85.05
Asheville, N.C.	544.90	431.24	113.66	94	4882	1162	8/3/34	So.St.Paul, Minn.	Hayne, S.C.	753.01	644.95	108.06
Asheville, N.C.	941.20	863.71	77.49	95	4883	785	7/23/34	New Brighton, Minn.	Hayne, S.C.	125.18	112.20	12.98
Asheville, N.C.	705.90	647.78	58.12	96	4884	3375	8/20/34	New Brighton, Minn.	Hayne, S.C.	1,832.13	1,583.64	248.49
Davidson Riv.,N.C.	2,186.65	1,692.63	294.02	97	4885	784	7/13/34	New Brighton, Minn.	Hayne, S.C.	414.04	356.07	57.97
Clyde, N.C.	1,274.40	1,077.78	196.62	98	4886	786	7/23/34	New Brighton, Minn.	Spartanburg, S.C.	130.88	116.83	14.05
Lumber City, Ga.	672.98	604.82	68.16	99	4887	3164	8/20/34	Milwaukee, Wis.	Spartanburg, S.C.	1,673.44	1,325.31	348.13
Sylva, N.C.	866.80	792.72	74.08	100	4889	3733	8/24/34	New Brighton, Minn.	Columbia, S.C.	466.65	406.06	60.59
Columbia, S.C.	777.01	676.31	98.70	101	4890	4525	9/10/34	So.St.Paul, Minn.	Cochran, Ga.	518.65	517.49	1.16
Columbia, S.C.	259.00	226.10	32.90	102	4891	4537	9/10/34	So.St.Paul, Minn.	Westlake, Ga.	518.65	515.33	3.32
Columbia, S.C.	259.00	226.10	32.90	103	4894	4544	9/13/34	So.St.Paul,Minn.	Towalaga, Ga.	407.14	396.29	10.85
Waynesville,N.C.	196.65	175.63	20.82	104	4895	1319	7/31/34	So.St.Paul,Minn.	Flat Rock, Ga.	197.42	191.47	5.95
Marshall, N.C.	525.63	443.38	82.25	105	5212	4131	9/4/34	New Brighton,Minn.	Clayton, N.C.	824.11	746.71	77.40
Princeton,N.C.	263.30	243.38	19.92	106	5213	3467	8/21/34	So.St.Paul, Minn.	Bryson, N.C.	996.01	929.27	66.74
Chappell,S.C.	647.51	562.41	85.10	107	5228	3354	8/23/34	So.St.Paul, Minn.	Statesville, N.C.	614.01	570.13	43.88
York, S.C.	783.95	629.30	154.65	108	5229	3351	8/23/34	So.St.Paul, Minn.	Statesville, N.C.	307.00	290.59	16.41
Clayton, N.C.	363.75	306.47	57.28	109	5230	337	8/22/34	So.St.Paul, Minn.	Statesville, N.C.	419.00	404.70	14.30
Princeton,N.C.	394.95	365.06	29.89	110	5231	1046	8/31/34	So.St.Paul, Minn.	Statesville, N.C.	127.50	118.74	8.76
York, S.C.	892.52	776.84	115.68	111	5232	1065	8/31/34	So.St.Paul, Minn.	Statesville, N.C.	127.50	118.87	8.63
York, S.C.	1,920.49	1,542.51	377.98	112	5549	4719	9/15/34	New Brighton,Minn.	Graham, N.C.	132.80	121.02	11.78
York, S.C.	1,864.79	1,524.23	340.56	113	5550	3347	9/1/34	So.St.Paul, Minn.	Winston-Salem,N.C.	518.00	471.45	46.55
York, S.C.	835.56	669.93	165.63	114	5551	3553	8/25/34	New Brighton, Minn.	Winston-Salem,N.C.	277.63	251.47	26.16
University,N.C.	286.50	265.49	21.01	115	5552	4568	9/10/34	New Brighton, Minn.	Asheville, N.C.	935.67	847.24	88.43
Wilson Mills,N.C.	266.40	246.11	20.29	116	5553	4591	9/15/34	New Brighton, Minn.	Asheville, N.C.	267.98	248.35	19.63
Princeton, N.C.	658.25	594.17	64.08	117	5554	3469	8/21/34	So.St.Paul, Minn.	Clyde, N.C.	245.00	221.40	23.60
Asheville, N.C.	1,244.65	1,082.25	162.40	118	5555	516	7/20/34	E.St.Louis, Ill.	Balsam, N.C.	186.50	161.36	25.14
Goldsboro, N.C.	104.55	95.02	9.53	119	5556	115	7/17/34	So.St.Paul, Minn.	St.Matthews, S.C.	838.92	731.00	107.92
Union, S.C.	126.96	110.11	16.85	120	5706	3194	8/14/34	So.St.Paul, Minn.	Boydton, Va.	948.51	889.10	59.41
Union, S.C.	126.96	110.11	16.85	121	5836	3321	8/18/34	So.St.Paul, Minn.	Murphy, N.C.	1,066.52	981.62	84.90
Union, S.C.	885.52	767.54	117.98	122	5696	3560	8/25/34	New Brighton, Minn.	Occoneechee, N.C.	1,635.86	1,326.22	309.64
Union, S.C.	379.51	328.95	50.56	123	5697	3737	8/29/34	New Brighton, Minn.	Hillsboro, N.C.	172.54	160.02	12.52
Union, S.C.	309.72	267.08	42.64	124	5698	3576	8/22/34	New Brighton, Minn.	Hillsboro, N.C.	170.61	158.24	12.37
Newberry, S.C.	388.51	338.49	50.02	125	5900	1045	8/31/34	So.St.Paul, Minn.	Asheville, N.C.	243.00	212.96	30.04
Rockton, S.C.	652.51	581.86	70.65	126	5966	127	7/20/34	Sioux City, Iowa	Ridgeway, S.C.	609.09	597.19	11.90
Ridgeway, S.C.	1,044.02	915.22	128.80	127	6093	126	7/20/34	Sioux City, Iowa	Woodward, S.C.	551.43	474.31	77.12
Johnston, S.C.	251.30	218.15	33.15	128	6094	996	7/27/34	So.St.Paul, Minn.	Johnston, S.C.	259.00	225.69	33.31
Jedburg, S.C.	385.95	338.69	47.26	129	6216	4590	9/10/34	New Brighton, Minn.	Bryson, N.C.	424.57	394.03	30.54
Shouns, Tenn.	227.20	209.10	18.10	130	6259	3350	8/23/34	So.St.Paul, Minn.	Taylorsville, N.C.	255.00	232.23	22.77
Broadnax, Va.	148.81	135.60	13.21	131	6260	3474	8/21/34	So.St.Paul, Minn.	Stovall, N.C.	140.00	126.76	13.24
Goldsboro, N.C.	1,052.52	953.14	99.38	132	6261	3471	8/21/34	So.St.Paul, Minn.	Hillsboro, N.C.	265.00	242.04	22.96
Asheville, N.C.	610.50	480.91	129.59	133	6262	3472	8/21/34	So.St.Paul, Minn.	Hillsboro, N.C.	132.50	128.02	4.48
Asheville, N.C.	1,093.52	958.41	135.11	134	6263	3558	8/25/34	New Brighton, Minn.	Mocksville, N.C.	835.49	772.07	63.42
Pisgah Forest,N.C.	2,223.03	2,067.74	155.29	135	6264	1047	8/30/34	So.St.Paul, Minn.	Newton, N.C.	126.50	118.72	7.78
Pisgah Forest,N.C.	2,111.78	1,838.06	273.72	136	6265	1048	8/30/34	So.St.Paul, Minn.	Newton, N.C.	126.50	118.72	7.78
Taylorsville,N.C.	127.50	118.75	8.75	137	6275	4155	9/4/34	So.St.Paul, Minn.	Lancaster, S.C.	388.51	339.66	48.85
Taylorsville,N.C.	362.51	356.28	26.23	138	6464	3468	8/24/34	So.St.Paul, Minn.	Balsam, N.C.	247.00	218.80	28.20
Kernersville,N.C.	130.60	121.82	8.98	139	6467	127	7/20/34	Sioux City, Iowa	Winnsboro, S.C.	274.83	239.24	35.59

(Uniform Live Stock Contract, adopted by Carriers in Official, Southern, Western and Illinois Classification territories, March 15, 1922, as amended August 1, 1930.)

UNIFORM LIVE STOCK CONTRACT

This form of contract to be used for shipments of Live Stock and Wild Animals instead of Uniform Bill of Lading

DUPLICATE ORIGINAL.—NOT NEGOTIABLE

Company

.....Station, ..., 193..

THIS AGREEMENT, made this.....day of....., 193.., by and between the .....COMPANY,

party of the first part, hereinafter called the carrier, *and.....

.....(Shipper's name)

part....of the second part, hereinafter called the shipper;

WHEREAS, The classifications and tariffs under which this agreement is made require that, for the purpose of applying the lawful rate of freight, the shipper must declare the shipment to be "Ordinary Live Stock," specifying the kind or kinds of animals, or if not "Ordinary Live Stock" he must declare the kind and value of each animal, space for such declaration being provided below:

NOW, THEREFORE, THIS AGREEMENT WITNESSETH, That the carrier has received from the shipper, subject to the classifications and tariffs in effect on the date of issue of this agreement, the live stock described below, in apparent good order, except as noted, consigned and destined as indicated below, which the carrier agrees to carry to its usual place of delivery at said destination, if on its road or on its own water line, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier* of all or any of said live stock over all or any portion of said route to destination, and as to each party at any time interested in all or any of said live stock, that every service to be performed and every liability incurred in connection with said shipment shall be subject to all the conditions, whether printed or written, herein contained, including the conditions on back hereof, and which are agreed to by the shipper and accepted for himself and his assigns.

Consigned to.....

Destination....., State of....., County of.....

Route.....

Car Initials and Numbers.....

ORDINARY LIVE STOCK

Ordinary live stock means all cattle, swine, sheep, goats, horses, and mules, except such as are chiefly valuable for breeding, racing, show purposes, or other special use. On shipments of ordinary live stock no declaration of value shall be made by the shipper, nor shall any values be entered on this bill of lading.

I (We) declare the shipment covered by this bill of lading to be ordinary live stock.

.....
Shipper.

OTHER THAN ORDINARY LIVE STOCK

On shipments of live stock chiefly valuable for breeding, racing, show purposes, or other special use, different rates of freight are in effect dependent on the valuation placed thereon by the shipper; which valuation may be the basic value as stated in the classification, at which the lowest freight rate applies, or it may be any higher valuation up to actual value, in which event the freight rate will be higher by the amount prescribed in the tariffs or classifications. Such declared or agreed values shall be entered in the columns provided therefor in this bill of lading, and in no event shall the carrier be liable for any amount in excess of such valuation.

I (We) declare the shipment covered by this bill of lading to be other than ordinary live stock, and of the value herein declared, or agreed upon, and entered.

.....
Shipper.

Note—The shipper shall execute one of the above declarations. Upon refusal of a shipper of other than ordinary live stock to declare the value of said stock for entry in this bill of lading the shipment will not be accepted for transportation under this contract. In the event the shipment consists of both ordinary live stock and other than ordinary live stock, both of such declarations shall be executed, but values shall be declared and entered on only the other than ordinary live stock.

Number and Description of Animals	Shipper's Declared Value (If on live stock chiefly valuable for breeding, racing, show purposes, or other special use)	Weight (Subject to correction)	Rate of Freight	
			Per 100 Lbs.	Per Car

Subject to Section 3 of conditions, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:

The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

.....
(Signature of consignor.)

If charges are to be prepaid, write or stamp here, "To be prepaid."

.....

Acknowledgment to be used if freight is prepaid.

Received $....., to apply in prepayment of the charges on the live stock described hereon.

.....
Agent or Cashier.

Per.....
(The signature here acknowledges only the amount prepaid.)

Charges advanced, $.....

Witness my hand....., Shipper.

By....., Shipper's Agent.

....., Witness.

The.....Company.

By....., Agent.

*The word "carrier" is to be understood throughout this contract as including any person or corporation in possession of the live stock under the contract.

See page 49 for explanation of abbreviations and other characters.

CONTRACT TERMS AND CONDITIONS.

Sec. 1. (a) Except in the case of its negligence proximately contributing thereto, no carrier or party in possession of all or any of the live stock herein described shall be liable for any loss thereof or damage thereto or delay caused by the act of God, the public enemy, quarantine, the authority of law, the inherent vice, weakness, or natural propensity of the animal, or the act or default of the shipper or owner, or the agent of either, or by riots, strikes, stoppage of labor or threatened violence.

(b) Unless caused by the negligence of the carrier or its employees, no carrier shall be liable for or on account of any injury or death sustained by said live stock occasioned by any of the following causes: Overlooking, crowding one upon another, escaping from cars, pens, or vessels, kicking or goring or otherwise injuring themselves or each other, suffocation, fright, or fire caused by the shipper or the shipper's agent, heat or cold, changes in weather or delay caused by stress of weather or damage to or obstruction of track or other causes beyond the carrier's control.

(c) In case of quarantine, the live stock may be discharged at risk and expense of owners into quarantine depot or elsewhere, as required by quarantine regulations or authorities, or for the carrier's dispatch, or at nearest available point in carrier's judgment, and in any such case carrier's responsibility shall cease when the property is so discharged, or the property may be returned by carriers at owner's expense to shipping point, earning freight both ways. Quarantine expenses of whatever nature or kind upon or in respect to the property shall be borne by the owners of the property or be a lien thereon. In case a shipment is stopped in transit by quarantine, the carrier shall immediately give notice of such fact to the shipper or consignee. Except in the case of its negligence proximately contributing thereto, no carrier shall be liable for loss or damage occasioned by fumigation or disinfection or other acts required or done under quarantine regulations or authorities, nor for detention, loss, or damage of any kind occasioned by quarantine laws or in the enforcement thereof; and the shipper shall hold the carrier harmless for any expense it may incur or damages it may be required to pay by reason thereof.

Sec. 2. (a) No carrier is bound to transport said live stock by any particular train or vessel or in time for any particular market, or otherwise than with reasonable dispatch. Every carrier shall have the right in case of physical necessity to forward said live stock by any carrier or route between the point of shipment and the point of destination.

(b) In all cases not prohibited by law, where a lower value than actual value has been represented in writing by the shipper or has been agreed upon in writing as the released value of the live stock as determined by the classification or tariffs upon which the rate is based, such lower value, plus freight charges, if paid, shall be the maximum amount to be recovered whether or not such loss or damage occurs from negligence.

(c) As a condition precedent to recovery, claims must be filed in writing with the receiving or delivering carrier, or carrier issuing this bill of lading, or carrier on whose line the loss, damage, injury or delay occurred, within nine months after delivery of the property (or, in case of export traffic, within nine months after delivery at port of export) or, in case of failure to make delivery, then within nine months after a reasonable time for delivery has elapsed; and suits shall be instituted against any carrier only within two years and one day from the day when notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof specified in the notice. Where claims are not filed or suits are not instituted thereon in accordance with the foregoing provisions, no carrier hereunder shall be liable, and such claims will not be paid.

Sec. 3. The owner or consignee shall pay the freight and average, if any, and all other lawful charges accruing on said property; but, except in those instances where it may lawfully be authorized to do so, no carrier by railroad shall deliver or relinquish possession at destination of the property covered by this live stock contract until all tariff rates and charges thereon have been paid. The consignor shall be liable for the freight and all other lawful charges, except that if the consignor stipulates, by signature, in the space provided for that purpose on the face of this contract that the carrier shall not make delivery without requiring payment of such charges, and the carrier, contrary to such stipulation, shall make delivery without requiring such payment, the consignor (except as hereinafter provided) shall not be liable for such charges. Provided, that, where the carrier has been instructed by the shipper or consignor to deliver said property to a consignee other than the shipper or consignor, such consignee shall not be legally liable for transportation charges in respect of the transportation of said property (beyond those billed against him at the time of delivery for which he is otherwise liable) which may be found to be due after the property has been delivered to him, if the consignee (a) is an agent only and has no beneficial title in said property, and (b) prior to delivery of said property has notified the delivering carrier in writing of the fact of such agency and absence of beneficial title, and, in the case of a shipment reconsigned or diverted to a point other than that specified in the original contract, has also notified the delivering carrier in writing of the name and address of the beneficial owner of said property; and, in such cases the shipper or consignor, or, in the case of a shipment so reconsigned or diverted, the beneficial owner, shall be liable for such additional charges. If the consignee has given to the carrier erroneous information as to who the beneficial owner is, such consignee shall himself be liable for such additional charges. Nothing herein shall limit the right of the carrier to require at time of shipment the prepayment or guarantee of the charges. If upon inspection it is ascertained that the articles shipped are not those described in this Live Stock Contract, the freight charges must be paid upon the articles actually shipped.

Sec. 4. (a) The shipper at his own risk and expense shall load and unload the live stock into and out of cars, except in those instances where this duty is made obligatory upon the carrier by statute or is assumed by a lawful tariff provision. In case any person shall accompany the live stock in charge of same, he shall take care of, feed and water the live stock while being transported, whether delayed in transit or otherwise, and whenever such person shall open or close any door or opening in the car or cars, or the pens or compartments in the vessel, he shall see that the same are so closed and fastened as to prevent the escape therefrom of any of the live stock.

(b) When bedding or appliances of a character not generally in use in the transportation of live stock are required, they shall be furnished by the shipper at his own expense and he shall separate different kinds of stock when loaded in the same car by adequately strong partitions and such stock shall be at the risk of the shipper as to any damage resulting from the insufficiency or inadequacy of any such bedding, appliance, or partition.

(c) Before the live stock is removed from the possession of the carrier or mingled with other live stock the shipper, owner, consignee or agent thereof shall inform in writing the delivering carrier of any visible or manifest injury to the live stock.

Sec. 5. (a) If all or any part of said live stock is carried by water over any part of said route, such water carriage shall be performed subject to all the terms and provisions of and all the exemptions from liability contained in the Act of the Congress of the United States, approved on February 13, 1893, and entitled "An act relating to the navigation of vessels, etc.," and of other statutes of the United States according carriers by water the protection of limited liability, and to the conditions contained in this bill of lading not inconsistent therewith or with this section.

(b) No such carrier by water shall be liable for any loss or damage resulting from any fire happening to or on board the vessel, or from explosion, bursting of boilers or breakage of shafts, unless caused by the design or neglect of such carrier.

(c) If the owner shall have exercised due diligence in making the vessel in all respects seaworthy and properly manned, equipped, and supplied, no such carrier shall be liable for any loss or damage resulting from the perils of the lakes, seas, or other waters, or from latent defects in hull, machinery, or appurtenances, whether existing prior to, at the time of, or after sailing, or from collision, stranding, or other accidents of navigation, or from prolongation of the voyage. And, when for any reason it is necessary, any vessel carrying any or all of the live stock herein described shall be at liberty to call at any port or ports, in or out of the customary route, to tow and be towed, to transfer, trans-ship, or lighter, to load and discharge goods at any time, and assist vessels in distress, to deviate for the purpose of saving life or property, and for docking and repairs. Except in case of negligence, such carrier shall not be responsible for any loss or damage to live stock if it be necessary or is usual to carry the same upon deck.

(d) General average shall be payable according to York-Antwerp Rules of 1924, Sections 1 to 15, inclusive, and Sections 17 to 22, inclusive, and as to matters not covered thereby, according to the law and usages of the Port of New York. If the owners shall have exercised due diligence to make the vessel in all respects seaworthy and properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster resulting from faults or errors in navigation, or in the management of the vessel, or from any latent or other defects in the vessel, her machinery or appurtenances, or from unseaworthiness, whether existing at the time of shipment or at the beginning of the voyage (provided the latent or other defects or the unseaworthiness was not discoverable by the exercise of due diligence), the shippers, consignees and/or owners of the cargo shall nevertheless pay salvage and any special charges incurred in respect of the cargo, and shall contribute with the shipowner in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred for the common benefit or to relieve the adventure from any common peril.

(e) If the live stock is being carried under a tariff which provides that any carrier or carriers party thereto shall be liable for loss from perils of the sea, then as to such carrier or carriers the provisions of this section shall be modified in accordance with the tariff provisions, which shall be regarded as incorporated into the conditions of this uniform live stock contract.

(f) The term "water carriage" in this section shall not be construed as including lighterage in or across rivers, harbors, or lakes, when performed by or on behalf of rail carriers.

Sec. 6. Any alteration, addition, or erasure in this contract which shall be made without an endorsement thereof hereon, signed by the agent of the carrier issuing this agreement, shall be without effect, and this agreement shall be enforceable according to its original tenor.

SEPARATE CONTRACT WITH MAN OR MEN IN CHARGE OF LIVE STOCK

.....Station, ...19..

In consideration of the carriage of the undersigned upon a freight train or vessel in charge of the live stock mentioned in the within contract, whether with or without charge for such carriage, each one of the undersigned severally hereby voluntarily assumes all risk of accident or damage to his person or property, and hereby releases and discharges each and every carrier from every claim, liability, or demand of any kind for or on account of any personal injury or damage of any kind sustained by him, unless caused by the negligence of such carrier or any of its employees; and agrees that whenever he shall leave the caboose and pass over or along the cars or track he will do so at his own risk of personal injury, except where the negligence of the carrier proximately contributes thereto; and that no carrier shall be required to stop or start its train or caboose cars at or from the depot or platforms, or to furnish light for his accommodation or safety.

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.....

(Signature of man or men in charge.)

.....

Witness.

See page 49 for explanation of abbreviations and other characters.

[fols. 31-32] EXHIBIT No. 6 TO PETITION

Property of the Federal Government

Carriers' charges to be collected from the Federal Surplus Relief Corporation, Washington, D. C., in same manner as if under a Government bill of lading.

Consignee's Certificate of Delivery

I have this day received from —— (Name of transportation company) at——(Actual point of delivery by carrier) the public property in this bill of lading, in apparent good condition, except as noted on the reverse hereof.

Weight—— (In words) pounds. ——(In figures)

——(Consignee) ——, 19— (Date)

Instructions for Billing

1. Consignee should pay no charges on this shipment.

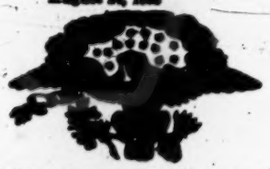
2. Charges to be billed to the Dept. or Estab. and Bu. or Service named above on authorized Government voucher form, attaching this bill of lading as supporting paper.

(Here follow 3 photolithographs, side folios 33, 33a, 34)

EXHIBIT No. 7 TO PETITION

UNITED STATES OF AMERICA

Standard Form No. 1203
Form Approved by
Comptroller General U. S.
August 24, 1950



GOVERNMENT BILL OF LADING

ORIGINAL

Bill to _____
(Department or Establishment and Bureau or Service)

SEE REVERSE HEREOF

_____
(Appropriation chargeable)

_____
(Issuing office)

_____ _____, 19____
(Name and title of issuing officer) (Date issued)

Received from _____
(Consignor)

by the _____ the public property hereinafter described,
(Name of transportation company)

in apparent good order and condition (contents and value unknown), to be forwarded subject to conditions stated on the reverse hereof,

from _____ to _____
(Shipping point) (Destination)

by the said company and connecting lines, there to be delivered in like good order and condition to _____
(Consignee)

_____

via _____
(Route journey only when some substantial interest of the Government is subserved thereby)

MARKS	NUMBERS ON PACKAGES	NUMBER AND KIND OF PACKAGES	DESCRIPTION OF ARTICLES (Observe strictly carrier's freight classification. Avoid trade or technical names)	WEIGHTS *

Size car ordered _____ ft. Size car furnished _____ ft. Date furnished _____ Initials _____ Car No. _____

TARIFF AUTHORITY
(To be filled in by general office rendering account)

_____

AUTHORITY FOR SHIPMENT

_____

_____
(Name of transportation company)

_____, 19____ Per _____
(Date) (Agent)

CERTIFICATE OF ISSUING OFFICER
(To be filled out when this bill of lading is issued for use by contractor in making shipment)

Contract No. _____, or Purchase Order No. _____, dated _____, 19____

_____ _____
(F. O. B. point named in contract) (Issuing officer)

(CARRIER'S RIGHTS TO SHIPPING CHARGES NOT AFFECTED BY FACTS SET OUT IN THIS CERTIFICATE)

CONSIGNEE'S CERTIFICATE OF DELIVERY

I have this day received from _____
(Name of transportation company)

at _____ the public property described in this bill
(Actual point of delivery by carrier)

of lading, in apparent good order and condition, except as noted on the reverse hereof.

Weight _____ pounds. _____
(In words) (In figures)

_____, 19____
(Consignee) (Date)

INSTRUCTIONS FOR BILLING 2—9564

1. Consignee should pay no charges on this shipment.
2. Charges to be billed to the Dept. or Estab. and Bu. or Service named above on authorized Government voucher form, attaching this bill of lading as supporting paper.

* Show also cubic measurement for shipments via ocean carrier in cases where required.

22A

Destination	Charges	Paid	Balance	Item	Bill	Bill of Lading		Origin	Destination	Charges	Paid	Balance
Davideon Riv..N.C.	$373.01	$338.55	$34.46	75	4635	3416	8/26/34	So.St.Paul, Minn.	Cochran, Ga.	$829.84	$817.20	$12.64
Ridge Springs,S.C.	251.20	218.77	32.43	76	4636	3412	8/26/34	So.St.Paul, Minn.	Cochran, Ga.	1,555.95	1,545.99	9.96
Clyde, N.C.	466.26	400.96	65.30	77	4637	191	7/16/34	Kansas City, Mo.	Haselhurst, Ga.	711.70	676.80	34.90
Clyde, N.C.	121.50	114.37	7.13	78	4640	4562	9/6/34	New Brighton, Minn.	Princeton, N.C.	831.53	775.28	56.25
Clyde, N.C.	129.64	120.42	9.22	79	4641	4590	9/10/34	New Brighton, Minn.	Sylva, N.C.	694.29	643.24	51.05
Clyde, N.C.	516.90	453.06	65.84	80	4642	4156	9/2/34	So.St.Paul, Minn.	York, S.C.	1,402.52	1,220.73	181.79
Clyde, N.C.	365.01	326.37	38.64	81	4643	3586	8/26/34	New Brighton, Minn.	Clarksville, Va.	135.80	124.32	11.48
Lumber City,Ga.	724.66	640.90	83.76	82	4817	4508	9/9/34	New Brighton, Minn.	Brown Summit, N.C.	264.04	245.40	18.64
Ninety Six, S.C.	1,278.83	1,080.88	197.95	83	4818	4511	9/11/34	New Brighton, Minn.	Benaja, N.C.	281.60	261.14	20.46
Asheville, N.C.	532.07	453.56	78.51	84	4819	4510	9/11/34	New Brighton, Minn.	Benaja, N.C.	290.55	269.36	21.19
Asheville, N.C.	295.31	266.76	28.55	85	4855	3319	8/16/34	So.St.Paul, Minn.	Clyde, N.C.	1,579.53	1,473.14	106.39
Clyde, N.C.	527.15	450.21	76.94	86	4856	3470	8/24/34	So.St.Paul, Minn.	Clyde, N.C.	364.51	339.96	24.55
Asheville, N.C.	532.18	494.35	37.83	87	4857	3713	8/27/34	New Brighton, Minn.	Haynes, S.C.	1,116.77	958.81	157.96
Asheville, N.C.	2,341.05	2,140.42	200.63	88	4858	1772	8/6/34	Sioux City, Iowa	Greenwood, S.C.	674.39	576.02	98.37
Clayton, N.C.	263.30	242.74	20.56	89	4861	3155	8/16/34	Sioux City, Iowa	Rockton, S.C.	683.40	595.18	88.22
Clayton, N.C.	263.30	237.16	26.14	90	4876	3322	8/16/34	So.St.Paul, Minn.	Sylva, N.C.	1,111.52	1,036.95	74.57
Newton, N.C.	772.89	717.39	55.50	91	4877	4566	9/11/34	New Brighton, Minn.	Davideon River,N.C.	123.80	114.86	8.94
Asheville, N.C.	318.60	273.34	45.26	92	4878	767	7/23/34	New Brighton, Minn.	Spartanburg, S.C.	275.92	236.60	39.32
Asheville, N.C.	424.80	383.15	41.65	93	4880	1024	7/26/34	So.St.Paul, Minn.	Spartanburg, S.C.	622.51	537.46	85.05
Asheville, N.C.	544.90	431.24	113.66	94	4882	1162	8/3/34	So.St.Paul, Minn.	hayne, S.C.	753.01	644.95	108.06
Asheville, N.C.	941.20	863.71	77.49	95	4883	785	7/23/34	New Brighton, Minn.	hayne, S.C.	125.18	112.20	12.98
Asheville, N.C.	705.90	647.78	58.12	96	4884	3375	8/20/34	New Brighton, Minn.	Hayne, S.C.	1,832.13	1,583.64	248.49
Davideon Riv..N.C.	2,186.65	1,692.63	294.02	97	4885	764	7/13/34	New Brighton, Minn.	Hayne, S.C.	414.04	356.07	57.97
Clyde, N.C.	1,274.40	1,077.78	196.62	98	4886	766	7/23/34	New Brighton, Minn.	Spartanburg, S.C.	130.88	116.83	14.05
Lumber City, Ga.	672.98	604.82	68.16	99	4887	3164	8/20/34	Milwaukee, Wis.	Spartanburg, S.C.	1,673.44	1,325.31	348.13
Sylva, N.C.	866.00	792.72	74.08	100	4889	3733	8/24/34	New Brighton, Minn.	Columbia, S.C.	466.65	406.06	60.59
Columbia, S.C.	777.01	676.31	98.70	101	4890	4525	9/10/34	So.St.Paul, Minn.	Cochran, Ga.	518.65	517.49	1.16
Columbia, S.C.	259.00	226.10	32.90	102	4891	4537	9/10/34	So.St.Paul, Minn.	Westlake, Ga.	518.65	515.33	3.32
Columbia, S.C.	259.00	226.10	32.90	103	4894	4544	9/13/34	So.St.Paul,Minn.	Towalaga, Ga.	407.14	396.29	10.85
Waynesville,N.C.	196.65	175.63	20.82	104	4895	1319	7/31/34	So.St.Paul,Minn.	Flat Rock, Ga.	197.42	191.47	5.95
Marshall, N.C.	525.63	443.38	82.25	105	5212	4131	9/4/34	New Brighton,Minn.	Clayton, N.C.	824.11	746.71	77.40
Princeton,N.C.	263.30	243.38	19.92	106	5213	3467	8/21/34	So.St.Paul, Minn.	Bryson, N.C.	996.01	929.27	66.74
Chappell,S.C.	647.51	562.41	85.10	107	5226	3354	8/23/34	So.St.Paul, Minn.	Statesville, N.C.	614.01	570.13	43.88
York, S.C.	763.95	629.30	134.65	108	5229	3351	8/23/34	So.St.Paul, Minn.	Statesville, N.C.	307.00	290.59	16.41
Clayton, N.C.	363.75	306.47	57.28	109	5230	337	8/22/34	So.St.Paul, Minn.	Statesville, N.C.	419.00	404.70	14.30
Princeton,N.C.	394.95	365.06	29.89	110	5231	1046	8/31/34	So.St.Paul, Minn.	Statesville, N.C.	127.50	118.74	8.76
York, S.C.	892.52	776.84	115.68	111	5232	1065	8/31/34	So.St.Paul, Minn.	Statesville, N.C.	127.50	118.87	8.63
York, S.C.	1,920.49	1,542.51	377.98	112	5549	4719	9/15/34	New Brighton,Minn.	Graham, N.C.	132.80	121.02	11.78
York, S.C.	1,864.79	1,524.23	340.56	113	5550	3347	9/1/34	So.St.Paul, Minn.	Winston-Salem,N.C.	518.00	471.45	46.55
York, S.C.	835.56	669.93	165.63	114	5551	3553	8/25/34	New Brighton, Minn.	Winston-Salem,N.C.	277.63	251.47	26.16
University,N.C.	286.50	265.49	21.01	115	5552	4568	9/10/34	New Brighton, Minn.	Asheville, N.C.	935.67	847.24	88.43
Wilson Mills,N.C.	266.40	246.11	20.29	116	5553	4591	9/15/34	New Brighton, Minn.	Asheville, N.C.	267.98	248.35	19.63
Princeton, N.C.	658.25	594.17	64.08	117	5554	3469	8/21/34	So.St.Paul, Minn.	Clyde, N.C.	245.00	221.40	23.60
Asheville, N.C.	1,244.65	1,082.25	162.40	118	5555	516	7/20/34	E.St.Louis, Ill.	Balsam, N.C.	186.50	161.36	25.14
Goldsboro, N.C.	104.55	95.02	9.53	119	5556	115	7/17/34	So.St.Paul, Minn.	St.Matthews, S.C.	838.92	731.00	107.92
Union, S.C.	126.96	110.11	16.85	120	5706	3194	8/14/34	So.St.Paul, Minn.	Boydton, Va.	948.51	889.10	59.41
Union, S.C.	126.96	110.11	16.85	121	5836	3321	8/16/34	So.St.Paul, Minn.	Murphy, N.C.	1,066.52	981.62	84.90
Union, S.C.	885.52	767.54	117.98	122	5696	3560	8/25/34	New Brighton, Minn.	Oconeeches, N.C.	1,635.86	1,326.22	309.64
Union, S.C.	379.51	328.95	50.56	123	5697	3737	8/29/34	New Brighton, Minn.	Hillsboro, N.C.	172.54	160.02	12.52
Union, S.C.	309.72	267.08	42.64	124	5898	3576	8/22/34	New Brighton, Minn.	Hillsboro, N.C.	170.61	158.24	12.37
Newberry, S.C.	388.51	338.49	50.02	125	5900	1045	8/31/34	So.St.Paul, Minn.	Asheville, N.C.	243.00	212.96	30.04
Rockton, S.C.	652.51	581.86	70.65	126	5966	127	7/20/34	Sioux City, Iowa	Ridgeway, S.C.	609.09	597.19	11.90
Ridgeway, S.C.	1,044.02	915.22	128.80	127	6093	126	7/20/34	Sioux City, Iowa	Woodward, S.C.	551.43	474.31	77.12
Johnston, S.C.	251.30	218.15	33.15	128	6094	996	7/27/34	So.St.Paul, Minn.	Johnston, S.C.	259.00	225.69	33.31
Jedburg, S.C.	385.95	338.69	47.26	129	6216	4590	9/10/34	New Brighton, Minn.	Bryson, N.C.	424.57	394.03	30.54
Shouns, Tenn.	227.20	209.10	18.10	130	6259	3350	8/23/34	So.St.Paul, Minn.	Taylorsville, N.C.	255.00	232.23	22.77
Broadnax, Va.	148.81	135.60	13.21	131	6260	3474	8/21/34	So.St.Paul, Minn.	Stovall, N.C.	140.00	126.76	13.24
Goldsboro, N.C.	1,052.52	953.14	99.38	132	6261	3471	8/21/34	So.St.Paul, Minn.	Hillsboro, N.C.	265.00	242.04	22.96
Asheville, N.C.	610.50	480.91	129.59	133	6262	3472	8/21/34	So.St.Paul, Minn.	hillsboro, N.C.	132.50	128.02	4.48
Asheville, N.C.	1,093.52	958.41	135.11	134	6263	3558	8/25/34	New Brighton, Minn.	Mocksville, N.C.	835.49	772.07	63.42
Pisgah Forest,N.C.	2,223.03	2,067.74	155.29	135	6264	1047	8/30/34	So.St.Paul, Minn.	Newton, N.C.	126.50	118.72	7.78
Pisgah Forest,N.C.	2,111.78	1,638.06	273.72	136	6265	1046	8/30/34	So.St.Paul, Minn.	Newton, N.C.	126.50	118.72	7.78
Taylorsville,N.C.	127.50	118.75	8.75	137	6275	4155	9/4/34	So.St.Paul, Minn.	Lancaster, S.C.	388.51	339.66	48.85
Taylorsville,N.C.	362.51	356.28	26.23	138	6464	3468	8/24/34	So.St.Paul, Minn.	Balsam, N.C.	247.00	218.80	28.20
Kernersville,N.C.	130.60	121.82	8.98	139	6467	127	7/20/34	Sioux City, Iowa	Winnsboro, S.C.	274.83	239.24	35.59
Rural Hall, N.C.	130.80	121.84	8.96	140	6799	1045	8/31/34	So.St.Paul, Minn.	Newton, N.C.	126.50	117.80	8.70
Newton, N.C.	379.51	376.48	3.03	141	6800	4591	9/15/34	New Brighton, Minn.	Topton, N.C.	677.77	578.87	98.90
Asheville, N.C.	1,600.40	1,483.96	116.44	142	6801	4591	9/15/34	New Brighton, Minn.	Murphy, N.C.	252.55	230.80	21.75
Asheville, N.C.	121.50	113.32	8.18	143	6802	4568	9/10/34	New Brighton, Minn.	Murphy, N.C.	385.79	352.63	33.16
Clyde, N.C.	1,060.48	867.74	212.74	144	6675	3560	8/25/34	New Brighton, Minn.	Mebane, N.C.	138.03	128.05	9.98
Gaffney, S.C.	379.51	328.22	51.29	145	6941	1039	7/22/34	National Stock Yds.,Ill.	Goldsboro, N.C.	210.50	191.04	19.46
Pacolet, S.C.	414.95	357.19	57.76	146	6941	725	7/22/34	National Stock Yds.,Ill.	Goldsboro, N.C.	210.50	191.04	19.46
St.Matthews,S.C.	1,665.62	1,612.57	253.05	147	6941	341	7/22/34	National Stock Yds.,Ill.	Goldsboro, N.C.	1,052.53	955.18	97.35
Summerville, S.C.	281.42	243.30	38.12									
									Totals	$86,481.89	76,584.99	9,896.90

ADMINISTRATIVE DIRECTIONS

1. Government property will be transported on the prescribed form of Government bill of lading (original, memorandum, and shipping order), which will be identified by serial numbers.
2. Through bills of lading will be issued in all instances between initial and ultimate points, except when rates more advantageous to the Government may be otherwise secured.
3. When shipments are made under contract or special rates, notation of such fact should appear on the face of bills of lading.
4. Officers charged with the duty of providing or securing Government transportation should familiarize themselves with land-grant railroads in order that shipments may be made at the lowest rates available to the Government by the use of such lines, or lines equalizing rates therewith.
5. Public property may be delivered by any Government officer or agent to the Quartermaster Corps, U. S. Army, which will ship the same under its regulations. (28 Stat. 111.)
6. Bills of lading must describe shipments of articles by their commercial names, giving separately such weights, dimensions, and manner of packing as may be necessary to ascertain classifications and rates and to enable recovery in case of loss or damage.
7. If the number of articles to be shipped be too great for the blank form (original, memorandum, and shipping order), extra sheets of the prescribed form should be used, and so attached and designated as to form but one bill of lading, under one number.
8. A voucher when submitted for settlement shall cover charges to one office or service only. The name of the office is inserted at the top of the bill of lading. Correspondence regarding transportation accounts shall be addressed to the particular office or service and reference made to the serial numbers of the Government bills of lading included in the company's bill.

REPORT OF LOSS, DAMAGE, OR SHRINKAGE

Notice is hereby given the carrier to whom this bill of lading is surrendered that the shipment was received in condition shown below and that claim is made for the value of such loss, damage, or shrinkage, as indicated.

Explanation regarding loss, damage, or shrinkage to be made by consignee, who will state all the facts available concerning the nature or extent of the loss, damage, or shrinkage, and how it occurred.

The within shipment was received with the following loss, damage, or shrinkage:

Description: .....

.....

.....

.....

.....

.....

Weight of such articles ..... pounds.

Invoice value or cost of repairs, $.....

I certify that the facts noted above are correct.

.....
Consignee.

By .....

Title .....

GENERAL CONDITIONS AND INSTRUCTIONS

CONDITIONS

It is mutually agreed and understood between the United States and carriers who are parties to this bill of lading that—

1. Prepayment of charges shall in no case be demanded by carrier, nor shall collection be made from consignee. On presentation to the office indicated on the face hereof of this bill of lading, properly accomplished, attached to freight voucher prepared on the authorized Government form, payment will be made to the last carrier, unless otherwise specifically stipulated.
2. Unless otherwise specifically provided or otherwise stated hereon, this bill of lading is subject to the same rules and conditions as govern commercial shipments made on the usual forms provided therefor by the carrier.
3. Shipment made upon this bill of lading shall take no higher rate than would be charged had the shipment been made upon the uniform straight bill of lading or uniform express receipt.
4. No charge shall be made by any carrier for the execution and presentation of bills of lading in manner and form as provided by the instructions hereon.
5. This shipment is made at the restricted or limited valuation specified in the tariff or classification at or under which the lowest rate is available, unless otherwise indicated on the face hereof.
6. Receipt of the shipment is made subject to the "Report of Loss, Damage, or Shrinkage" noted hereon.
7. In case of loss, damage, or shrinkage in transit, the rules and conditions governing commercial shipments shall not apply as to period within which notice thereof shall be given the carriers or to period within which claim therefor shall be made or suit instituted.

INSTRUCTIONS

1. Erasures, interlineations, or alterations in bills of lading must be authenticated and explained by the person making them.
2. Shipping order, original bill of lading, and memorandum bill of lading should be used in making a shipment. Only one original bill of lading will be issued for a single shipment. The shipping order should be furnished the initial carrier. The original bill of lading and memorandum copies should be signed by the agent of the receiving carrier, returned to the consignor, and the original promptly mailed to the consignee. The consignee on receipt of the shipment will sign the consignee's certificate on the original bill of lading and surrender the bill of lading to the last carrier. The bill of lading then becomes the evidence upon which settlement for the service will be made. Memorandum copies of bills of lading may be used as administrative officers direct.
3. In the absence of the consignee, or on his failure to receipt, the person receipting will certify that he is duly authorized to do so, reciting such authority.
4. In no case will a second bill of lading be issued for a shipment, nor will a bill of lading be issued after the transportation has been performed. In case the bill of lading has been lost or destroyed, the carrier shall be furnished by the consignee with a "Certificate in Lieu of Lost Bill of Lading," on the standard form prescribed therefor which, when finally consummated by acknowledgment of the "Certificate and Waiver by Transportation Company," shall accompany the bill for services submitted by the carrier to the officer charged with the settlement of the account. Should the original bill of lading be located after settlement has been made on the certificate, it will be forwarded to the administrative office of the department concerned for transmittal to the General Accounting Office.
5. To insure prompt delivery of property, in the absence of the bill of lading, the consignee should give to the carrier a "Temporary Receipt," executed on the prescribed form, for the property actually delivered. On the recovery of the bill of lading, or when the certificate provided for above shall have been given, a statement will be indorsed on said bill of lading or certificate of the fact of the delivery as per said temporary receipt, and the said temporary receipt will be indorsed with reference to the bill of lading or certificate sufficient to identify the same, and both papers attached and forwarded with the claim for payment thereon.
6. In case of loss or damage to property while in the possession of the carrier, such loss or damage shall, when practicable, be noted on the bill of lading or certificate in lieu thereof, as the case may be, before its accomplishment. All practicable steps shall be taken at that time to determine the loss or damage and the liability therefor, and to collect and transmit to the proper officer, without delay, all evidence as to the same. Should the loss or damage not be discovered until after the bill of lading or certificate has been accomplished, the proper officer shall be notified as soon as the loss or damage is discovered, and the agent of the carrier advised immediately of such loss or damage, extending privilege of examination of shipment.
7. Bills must be submitted by the general officers of carriers, and on forms furnished by the Government, to be obtained from the Public Printer, Washington, D. C.

U. S. GOVERNMENT PRINTING OFFICE: 1933 10—1874

[fols. 35-36]

EXHIBIT No. 9 TO PETITION

Statement of amount due by United States Government covering deductions or disallowances made in the settlement of freight charges on various shipments listed below

Item	Bill	Bill of Lading		Origin	Destination	Charges	Paid	Balance
				U. S. Department of Agriculture				
1	F-4226	599904	5/27/35	Norwood, Ohio	Newberry, S. C.	$9.66	$8.58	$1.08
2	4344	555620	5/28/35	Cookville, Tenn.	Raleigh, N. C.	36.19	32.47	3.72
3	8293	660993	11/22/35	Norwood, Ohio	Oxford, N. C.	8.98	8.34	0.64
4	9446	1312004	11/23/35	Wayland, N. Y.	Athens, Ga.	9.45	8.65	0.80
5	734	1300920	1/31/36	Springfield, Ohio	Gainesville, Ga.	542.54	404.56	137.98
6	615	1414680	2/21/36	Washington, D. C.	Athens, Ga.	4.65	4.12	0.53
7	3605	1290140	4/28/36	Norwood, Ohio	Asheville, N. C.	18.67	17.21	1.46
					Totals	$630.14	$483.93	$146.21
				U. S. Department of Commerce				
8	8211	171990	11/20/35	Charleston, S. C.	Atlanta, Ga.	1.09	0.74	0.35
9	8211	171894	11/ 1/35	Charleston, S. C.	Atlanta, Ga.	31.69	21.40	10.29
10	8211	165501	11/ 4/35	Charleston, S. C.	Atlanta, Ga.	1.28	0.88	0.40
					Totals	$34.06	$23.02	$11.04
				Finance Office, U. S. War Department				
11	332	882830	12/29/34	Jeffersonville, Ind.	Bryson, N. C.	79.12	77.68	1.44
12	2816	1006581	4/17/35	Ft. Oglethorp, Ga.	Corinth, Miss.	95.16	86.06	9.10
13	4189	1006693	6/17/35	Ft. Oglethorp, Ga.	Corinth, Miss.	81.34	73.42	7.92
14	4190	1006673	6/ 7/35	Ft. Oglethorp, Ga.	Corinth, Miss.	68.41	62.67	5.74
15	4191	1006663	6/ 1/35	Ft. Oglethorp, Ga.	Corinth, Miss.	135.71	122.61	13.10
16	4738	1128434	7/20/35	Jeffersonville, Ind.	Clinchport, Va.	2.65	1.29	1.36
17	4923	1195286	7/12/35	New Cumberland, Pa.	Big Stone Gap, Va.	1.58	1.34	0.24
18	4923	1195192	7/11/35	New Cumberland, Pa.	Big Stone Gap, Va.	46.39	39.11	7.28
19	4923	693632	7/11/35	Johnstown, Pa.	Big Stone Gap, Va.	5.20	4.13	1.07
20	2235	1213010	3/28/36	Jeffersonville, Ind.	Columbia, S. C.	12.70	11.09	1.61
21	4767	1340779	5/22/36	Kansas City, Mo.	Ft. McClellan, Ala.	226.90	205.60	21.30
22	4908	1340780	6/12/36	Kansas City, Mo.	Ft. McClellan, Ala.	226.90	205.60	21.30
					Totals	$982.06	$890.60	$91.46

EXHIBIT No. 9 TO PETITION—Continued.

Item	Bill	Bill of Lading		Origin	Destination	Charges	Paid	Balances
				U. S. Treasury Department				
23	2306	39350	4 7/36	Cincinnati, Ohio	Huntsville, Ala	13.45	8.99	4.46
24	4929	29081	5/29/36	Springfield, Ohio	Sumter, S. C	758.96	614.77	144.19
	Totals					$ 772.41	$ 623.76	$148.65
				U. S. Veterans Administration				
25	7712	197103	10/26/35	Atlanta, Ga	Johnson City, Tenn	14.78	12.74	2.04
				U. S. War Department—Engineers				
26	5232	117852	7/31/35	Rochester, N. Y.	Charleston, S. C.	19.55	16.67	2.88
27	5599	132552	7/ 9/35	Nashville, Tenn.	Washington, D. C.	8.03	7.08	0.95
28	2143	117919	4/ 1/36	Washington, D. C.	Charleston, S. C.	1.24	1.07	0.17
29	2143	117915	4/ 4/36	Washington, D. C.	Charleston, S. C.	4.35	2.31	2.04
30	2143	117922	4/ 1/36	Washington, D. C.	Charleston, S. C.	7.30	6.31	0.99
31	3476	117923	3/19/36	Washington, D. C.	Charleston, S. C.	17.20	14.90	2.30
32	3674	117918	4/16/36	Philadelphia, Pa.	Charleston, S. C.	15.48	13.40	2.08
33	3674	117920	4/21/36	Washington, D. C.	Charleston, S. C.	2.93	2.52	0.41
34	3946	117917	5/16/36	Washington, D. C.	Charleston, S. C.	13.34	11.55	1.79
35	3946	138634	5/19/36	Washington, D. C.	Charleston, S. C.	1.13	0.97	0.16
	Totals					$ 90.55	$ 76.78	$ 13.77
	Grand Totals					$2,524.00	$2,110.83	$413.17

[fols. 37-38] II. General Traverse—Filed August 24, 1940

And now comes the Attorney General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

(Sgd.) Francis M. Shead, Assistant Attorney General.

LRM.

III. Argument and Submission of Case

On June 7, 1943, the argument of case on merits was begun for plaintiff by Mr. Seddon G. Boxley.

On June 8, 1943, the argument of the case was concluded and case submitted on merits. Argued by Mr. Seddon G. Boxley for plaintiff, and by Assistant Attorney General Francis M. Shea for defendant.

[fol. 39] IV. **Special Findings of Fact, Conclusion of Law and Opinion of the Court by Littleton, J.**—Filed October 4, 1943.

Mr. Seddon G. Boxley for the plaintiff. *Mr. S. R. Prince* was on the brief.

Mr. Assistant Attorney General Francis M. Shea for the defendant. *Messrs. Louis R. Mehlinger and Charles L. Brodman* were on the brief.

Plaintiff asks judgment for $10,898.26 as the balance alleged to be due from defendant as freight charges for the transportation of various shipments of Government property. Defendant asserts a counterclaim in the net amount of $1,251.73 for certain alleged overpayments of the freight due. The question presented involves the interpretation of paragraph 1 of the Freight Land-grant Equalization Agreement entered into by the parties November 29, 1933, as authorized by section 22 of the Interstate Commerce Act of February 4, 1887 (24 Stat. 379, 387; 49 U. S. Code, Sec. 22), under which agreement the Government was given reduced freight rates on shipments of Government property.

Special Findings of Fact

1. The plaintiff, a Virginia corporation, now is and was during all the times hereinafter mentioned a common carrier of freight and passengers in interstate and intrastate

commerce. It was the last or delivering carrier of all shipments hereinafter mentioned and as such is entitled to collect all freight charges.

[fol. 40] All the transportation herein involved was completed within the statutory time for bringing suit, and none of the items are barred by the statute of limitations.

2. November 29, 1933, plaintiff and defendant entered into an agreement entitled "Freight Land-grant Equalization Agreement," a copy of which is marked "Plaintiff's Exhibit I" as a part of stipulation of facts herein. Therein plaintiff agreed (paragraph No. 1):

> To accept for the transportation of property shipped for account of the Government of the United States and for which the Government of the United States is lawfully entitled to reduced rates over land-grant roads, the lowest net rates lawfully available, as derived through deductions account of land-grant distance from the lawful rates filed with the Interstate Commerce Commission applying from point of origin to destination at time of movement.

This acceptance was made subject to the following condition:

> 2. (a) On traffic destined to and/or received from points on lines of other carriers this agreement will only apply in connection with such carriers as have an agreement of the form stated in paragraph 1 above on file with the Quartermaster General, War Department, Washington, D. C., except as otherwise provided under the heading of "Exceptions" in paragraph 3 below [exceptions not here in controversy].

The agreement was in full force and effect on the dates of transportation of all shipments embraced in this proceeding. The copy thereof referred to is made part of these findings by reference.

3. The purpose and effect of the freight equalization agreements of the defendant with plaintiff and with other common carriers was to equalize rates on Government property over various routes serving the same point of origin and destination, where one or more of those routes had been aided in whole or in part by grant of public lands, rates over

all routes from point of origin to destination being brought down to the level of that over the route producing the lowest net rate on account of land-grant deduction.

This arrangement was designed to give the equalizing carrier a portion of the Government business that was possible [fol. 41] of routing over the governing land-grant route, and to give the Government a greater range in choice of routes where considerations of economy entered into the selection.

All of the gross freight charges herein employed by one party or the other are, except as may hereinafter specifically appear, correctly derived either, on the one hand, from lawful rates on interstate traffic filed with the Interstate Commerce Commission, or, on the other, from undisputed intrastate rates, all filed with the Interstate Commerce Commission, and all applying from point of origin to destination at time of movement, in each instance over the route made use of for calculating net rates, if any, derived through deductions on account of land-grant distance.

All net charges respectively resulting from land-grant distance have been correctly computed herein for the several routes employed by either party, except as may hereinafter specifically appear.

Intrastate traffic is confined in this suit to the following items (not including those abandoned) listed in Exhibit No. 8 to the petition:

Item:	Amount	Item:	Amount	Item:	Amount
164	$13.42	218	$ 2.99	224	$18.19
168	.38	219	1.28	225	103.45
169	.37	220	33.51	226	10.91
215	26.14	221	18.22	227	33.15
216	22.81	222	33.90		
217	28.89	223	17.94		
Total					365.55

There is no dispute between the parties as to application of freight tariffs. The dispute herein is as to whether the available routes constructed from lawful tariffs and used by the defendant in calculating freight charges for purposes of payment are, irrespective of the tariffs, available for such use under the general freight land-grant equalization agreement. The parties herein stipulate that "If the Court should find that in the first and second causes of action defendant has not computed the charges in accordance with the tariffs and land-grant equalization agreement hereinbefore cited,

EXHIBIT No. 8 TO PETITION

Statement of amounts due by Tennessee Valley Authority, covering deductions or disallowances made in the settlement of freight charges on various shipments listed below.

Item	Bill	Bill of Lading		Origin	Destination	Charges	Paid	Balance
1	F5486	3403	8/13/34	Ludington, Mich.	Town Creek, Ala.	$15.79	$14.45	$1.34
2	5486	3230	7/24/34	"	"	1.39	1.26	.13
3	5486	3087	8/14/34	Salem, Ohio	"	61.44	53.72	7.72
4	5486	2938	8/ 1/34	Oakmont, Pa.	"	75.90	67.28	8.62
5	5486	3075	8/ 4/34	Chicago, Ill.	"	27.14	24.08	3.06
6	5486	3278	7/31/34	Pittsburg, Pa.	"	26.35	23.58	2.77
7	5486	2512	8/17/34	Clinton, Tenn.	"	1.19	1.10	.09
8	5486	2511	8/14/34	"	"	83.98	77.41	6.57
9	5486	2507	8/ 3/34	"	"	10.56	9.73	.83
10	5486	3200	8/ 7/34	Greenfield, Mass	"	47.54	43.44	4.10
11	5486	1411	8/18/34	Washington, D.C.	"	8.20	7.17	1.03
12	569	5462	1/12/35	Sheffield, Ala.	Corinth, Miss.	54.50	35.24	19.26
13	738	2257	1/17/35	Birmingham, Ala.	Town Creek, Ala.	50.46	47.98	2.48
14	1339	5556	2/14/35	Sheffield, Ala.	Corinth, Miss.	27.12	17.49	9.63
15	1339	5542	2/ 9/35	"	"	3.16	2.03	1.13
16	1339	2544	2/ 8/35	Clinton, Tenn.	"	4.17	3.65	.52
17	1339	5663	2/12/35	"	"	74.44	65.33	9.11
18	2128	5665	2/27/35	"	"	27.61	23.15	4.46
19	2164	2549	3/ 7/35	"	"	38.71	37.20	1.51
20	2164	5608	3/ 5/35	Sheffield, Ala.	"	3.70	2.67	1.03
21	2164	5603	3/ 4/35	"	"	24.17	15.30	8.87
22	2164	5668	3/ 2/35	Clinton, Tenn.	"	20.19	15.51	4.68
23	2164	2547	3/ 2/35	"	"	19.42	14.87	4.55
24	2164	5669	3/ 2/35	"	"	4.69	3.55	1.14
25	2165	6514	3/ 7/35	Coal Creek, Tenn.	"	213.52	167.48	46.04
26	2166	5623	3/ 5/35	Sheffield, Ala.	"	40.15	25.89	14.26
27	2167	5670	3/ 8/35	Clinton, Tenn.	"	98.32	84.68	13.64
28	2177	5671	3/15/35	"	"	1.17	.99	.18
29	2177	5627	3/13/35	Sheffield, Ala.	"	6.35	4.09	2.26
30	2177	5641	3/18/35	"	"	1.97	1.27	.70
31	2233	5686	4/ 3/35	Clinton, Tenn.	"	30.04	25.28	4.76
32	2233	5685	4/ 3/35	"	"	125.77	107.01	18.76
33	2233	5688	4/ 5/35	"	"	33.54	28.14	5.40
34	2233	6837	4/ 4/35	Sheffield, Ala.	"	2.01	1.29	.72
35	2233	6845	4/ 5/35	"	"	2.58	1.67	.91
36	2233	6834	4/ 3/35	"	"	3.76	2.43	1.33
37	2233	6856	4/10/35	"	"	4.76	3.07	1.69
38	2233	5687	4/ 4/35	Clinton, Tenn.	"	9.50	8.10	1.40
39	2312	6825	3/29/35	Sheffield, Ala.	"	41.94	27.04	14.90
40	2313	6828	4/ 1/35	"	"	29.97	19.32	10.65
41	2313	6819	3/28/35	"	"	2.99	1.93	1.06
42	2313	5680	3/29/35	Clinton, Tenn.	"	1.04	0.87	0.17
43	2313	5681	3/29/35	"	"	16.24	14.06	2.18
44	2313	5676	3/22/35	"	"	2.57	2.14	0.43
45	2313	5675	3/21/35	"	"	4.76	3.52	1.24
46	2313	6812	3/26/35	Sheffield, Ala.	"	8.06	5.20	2.86
47	2332	6194	3/26/35	Bessmer, Ala.	Town Creek, Ala.	26.18	24.08	2.10
48	2617	6681	3/26/35	Savannah, Ga.	Clinton, Tenn.	17.99	16.58	1.41
49	2754	569[illegible]	/17/35	Clinton, Tenn.	Corinth, Miss.	2.95	2.52	0.43
50	2754	5699	4/20/35	"	"	4.45	3.80	0.65
51	2754	5698	4/20/35	"	"	54.66	46.79	7.87
52	2754	5696	4/20/35	"	"	2.85	2.40	0.45
53	2754	7401	4/22/35	Clinton, Tenn.	"	3.52	2.98	.54
54	2754	6889	4/19/35	Sheffield, Ala.	"	9.20	5.84	3.36
55	2754	6863	4/11/35	"	"	6.40	4.08	2.32
56	2754	7450	4/23/35	"	"	7.40	4.70	2.70
57	2754	7455	4/24/35	"	"	1.84	1.19	.65
58	2754	6892	4/19/35	"	"	1.91	1.21	.70
59	2755	6890	4/19/35	"	"	9.24	5.51	3.73
60	2812	5691	4/13/35	Clinton, Tenn.	"	.82	.72	.10
61	2812	7227	4/13/35	Coal Creek, Tenn.	"	.97	.84	.13
62	2812	7039	4/18/35	Clinton, Tenn.	"	30.96	26.40	4.56
63	2812	5689	4/ 6/35	"	"	6.42	5.47	.95
64	2812	6859	4/10/35	Sheffield, Ala.	"	2.68	1.66	1.02
65	2812	6855	4/ 9/35	"	"	31.08	19.68	11.40
66	2812	6874	4/15/35	"	"	5.35	3.39	1.96
67	2879	5692	4/13/35	Clinton, Tenn.	Town Creek, Ala.	3.61	3.36	.25
68	2879	5695	4/18/35	"	"	.81	.74	.07
69	2879	5697	4/20/35	"	"	5.45	5.00	.45
70	2879	7400	4/22/35	"	"	4.64	4.26	.38
71	2879	5690	4/11/35	"	"	4.53	4.15	.38
72	2879	5684	4/ 2/35	"	"	23.22	21.50	1.72
73	2879	5678	3/28/35	"	"	5.92	4.77	1.15
74	2879	5679	3/29/35	"	"	3.49	3.24	.25
75	3052	7827	5/ 8/35	Memphis, Tenn.	Sheffield, Ala.	138.88	104.04	34.84
76	3088	7407	5/ 3/35	Clinton, Tenn.	Corinth, Miss.	6.06	5.36	.70
77	3088	7475	5/ 3/35	Sheffield, Ala.	"	.84	.53	.31
78	3088	7477	5/ 3/35	"	"	14.53	9.20	5.33
79	3088	7480	5/ 4/35	"	"	1.00	.62	.38
80	3088	7495	5/ 8/35	"	"	2.05	1.32	.73
81	3088	7500	5/ 9/35	"	"	2.99	1.89	1.10
82	3088	7515	5/14/35	"	"	3.78	2.38	1.40
83	3088	7516	5/15/35	"	"	4.70	2.97	1.73
84	3088	8389	5/11/35	Knoxville, Tenn.	"	2.36	2.03	.33
85	3088	7409	5/ 7/35	Clinton, Tenn.	"	3.12	2.62	.50
86	3093	7794	5/18/35	Chicago, Ill.	Coal Creek, Tenn.	172.54	144.54	28.00
87	3093	6723	5/16/35	"	"	198.96	166.32	32.64
88	3093	8351	5/14/35	"	"	168.72	141.38	27.34
89	3230	7402	4/26/35	Clinton, Tenn.	Corinth, Miss.	15.98	14.01	1.97
90	3317	7411	5/14/35	"	"	33.21	24.36	8.85
91	3524	7412	5/14/35	"	"	11.02	10.16	.86
92	3642	7415	5/20/35	"	Town Creek, Ala.	2.30	2.13	.17
93	3642	7414	5/18/35	"	"	1.30	1.22	.08
94	3646	7404	4/30/35	"	"	7.92	7.24	.68
95	3646	7573	4/23/35	"	"	32.12	29.57	2.55
96	3646	7406	5/ 1/35	"	"	1.05	.95	.10
97	3647	7054	4/26/35	Kent, Ohio	"	25.29	22.87	2.42
98	3647	7055	4/30/35	"	"	25.29	22.87	2.42
99	3649	7761	5/ 3/35	Coal Creek, Tenn.	Town Creek, Ala.	57.29	52.55	4.74
100	3805	9333	6/ 5/35	Sheffield, Ala.	Corinth, Miss.	3.75	2.42	1.33
101	3805	9337	6/ 6/35	"	"	1.25	.81	.44
102	3805	9341	6/ 7/35	"	"	2.52	1.62	.90
103	3805	9351	6/11/35	"	"	1.20	.77	.43
104	3805	9369	6/17/35	"	"	8.35	5.38	2.97
105	3805	9361	6/12/35	Sheffield, Ala.	"	9.28	5.98	3.30
106	3805	8676	6/14/35	Knoxville, Tenn.	"	8.69	7.54	1.15
107	3805	8643	6/10/35	Clinton, Tenn.	"	39.87	33.94	5.93
108	3805	7419	6/11/35	"	"	22.21	19.49	2.72
109	3806	7777	5/ 3/35	Knoxville, Tenn.	"	41.34	35.84	5.50
110	3877	7417	6/ 3/35	Clinton, Tenn.	Town Creek, Ala.	7.58	6.77	.81
111	4076	8570	5/29/35	Knoxville, Tenn.	Corinth, Miss.	1.91	1.65	.26
112	4076	8591	6/ 1/35	"	"	7.53	6.52	1.01
113	4077	9329	6/ 3/35	Sheffield, Ala.	"	1.85	1.19	.66
114	4077	9319	5/31/35	"	"	14.54	9.38	5.16

Item	Bill	Bill of Lading		Origin
115	F-4077	9316	5/29/35	Sheffield,Ala.
116	4087	8375	5/21/35	Tacoma, Wash.
117	4088	8371	5/25/35	"
118	4153	9301	5/24/35	Sheffield,Ala.
119	4153	8435	5/18/35	Knoxville,Tenn.
120	4159	7547	5/24/35	Corinth,Miss.
121	4980	10455	7/22/35	Coal Creek,Tenn.
122	4980	10442	7/20/35	Knoxville,Tenn.
123	4980	9503	7/26/35	Sheffield,Ala.
124	4980	9494	7/24/35	"
125	4980	9489	7/23/35	"
126	4980	9506	7/26/35	"
127	5144	9473	7/15/35	"
128	5144	9432	7/ 8/35	"
129	5144	10338	7/10/35	Knoxville,Tenn.
130	5739	7435	7/31/35	Clinton,Tenn.
131	5739	7434	7/29/35	"
132	5739	7432	7/26/35	"
133	5934	9512	8/ 8/35	Sheffield,Ala.
134	5934	9602	8/17/35	"
135	5934	9604	8/17/35	"
136	5934	9617	8/21/35	"
137	5934	9622	8/23/35	"
138	5934	10339	8/26/35	Coal Creek,Tenn.
139	7866	11937	11/ 7/35	"
140	7866	12077	11/12/35	Sheffield,Ala.
141	7928	8131	10/25/35	Courtland,Ala.
142	7928	8133	10/30/35	Athens,Ala.
143	7928	11846	10/24/35	Coal Creek,Tenn.
144	7928	12014	10/23/35	Sheffield,Ala.
145	7928	12026	10/25/35	"
146	7928	12032	10/28/35	"
147	7928	12038	10/30/35	"
148	7928	12044	11/ 1/35	Wheeler,Ala.
149	7928	12048	11/ 1/35	Sheffield,Ala.
150	7928	12050	11/ 4/35	"
151	7928	12061	11/ 5/35	"
152	7928	12065	11/ 6/35	"
153	8122	12070	11/ 8/35	"
154	8122	12677	11/14/35	Coal Creek,Tenn.
155	8122	11897	10/31/35	"
156	8122	12665	11/11/35	Knoxville,Tenn.
157	8122	12658	11/11/35	Coal Creek,Tenn.
158	8124	11986	11/11/35	"
159	8126	12075	11/11/35	Sheffield,Ala.
160	8127	12105	11/25/35	"
161	8139	11166	11/ 1/35	Alliance,Ohio
162	8141	11952	11/11/35	Memphis,Tenn.
163	8832	11956	11/12/35	"
164	9165	12190	12/19/35	Sheffield,Ala.
165	9219	11922	12/24/35	Cincinnati,Ohio
166	9225	12110	11/29/35	Corinth,Miss.
167	9225	12103	11/27/35	"
168	9253	12205	12/24/35	Sheffield,Ala.
169	9254	12197	12/21/35	"
170	9260	12148	12/11/35	Corinth,Miss.
171	9260	8185	12/ 9/35	"
172	9449	12193	12/20/35	Sheffield,Ala.
173	9449	12147	12/ 7/35	"
174	9925	8252	1/ 7/36	Town Creek,Ala.
175	10036	12240	1/21/36	Corinth,Miss.
176	10232	8270	1/17/36	"
177	10236	8267	1/13/36	Iuka,Miss.
178	10239	8260	1/11/36	Corinth,Miss.
179	10287	8293	1/18/36	Sheffield,Ala.
180	10288	13335	1/13/36	Coal Creek,Tenn.
181	10292	8216	12/31/35	Town Creek,Ala.
182	10293	12238	1/ 6/36	Sheffield,Ala.
183	10402	12875	12/ 3/35	Anniston,Ala.
184	107	12291	2/ 3/36	Corinth,Miss.
185	156	8291	1/17/36	Sheffield,Ala.
186	158	13440	1/28/36	Anniston,Ala.
187	160	12289	2/ 3/36	Corinth,Miss.
188	995	9017	3/26/36	Chattanooga,Tenn.
189	1018	13971	2/25/36	Coal Creek,Tenn.
190	1018	12399	2/21/36	Sheffield,Ala.
191	1018	12408	2/21/36	"
192	1018	14314	2/28/36	Coal Creek,Tenn.
193	1062	12374	3/ 9/36	Louisville,Ky.
194	1259	12479	3/11/36	Paint Rock,Ala.
195	1259	12420	2/25/36	Sheffield,Ala.
196	1259	12482	3/10/36	"
197	1595	14428	3/23/36	"
198	1595	12549	3/18/36	"
199	1694	12518	3/13/36	Corinth,Miss.
200	1902	10552	3/19/36	"
201	2055	12466	3/10/36	"
202	2055	14524	4/ 7/36	"
203	2055	14509	4/ 6/36	"
204	2732	14487	4/ 1/36	Sheffield,Ala.
205	2732	14564	4/14/36	"
206	2732	14514	4/ 4/36	"
207	2732	15477	4/15/36	Coal Creek,Tenn.
208	2732	15479	4/15/36	"
209	3072	14631	4/24/36	Sheffield,Ala.
210	3188	15853	5/ 4/36	Coal Creek,Tenn.
211	3188	14818	5/ 2/36	"
212	3188	14723	5/ 8/36	Sheffield,Ala.
213	3383	14639	4/27/36	Corinth,Miss.
214	4501	16340	6/13/36	"
215	4593	28167	5/17/37	Decatur,Ala.
216	4594	28200	5/17/37	"
217	7180	28724	7/12/37	Sheffield,Ala.
218	8781	30617	8/20/37	"
219	9043	30706	8/28/37	"
220	12409	33663	11/20/37	Decatur,Ala.
221	12409	33659	11/19/37	"
222	12822	33759	11/27/37	"
223	12822	33765	11/30/37	"
224	13319	33927	12/13/37	"
225	13881	34076	12/22/37	Margerum,Ala.
226	562	34394	1/27/38	Sheffield,Ala.
227	1939	36372	2/17/38	Decatur,Ala.

Totals

EXHIBIT No. 8 TO PETITION

Statement of amounts due by Tennessee Valley Authority, covering deductions or disallowances made in the settlement of freight charges on various shipments listed below.

Destination	Charges	Paid	Balance	Item	Bill	Bill of Lading		Origin	Destination	Charges	Paid	Balance
Town Creek, Ala.	$15.79	$14.45	$1.34	115	F-4077	9316	5/29/35	Sheffield,Ala.	Corinth,Miss.	$3.09	$1.99	$1.10
"	1.39	1.26	.13	116	4087	8375	5/21/35	Tacoma, Wash.	Florence,Ala.	957.18	926.03	31.15
"	61.44	53.72	7.72	117	4088	8371	5/25/35	"	"	661.60	640.13	21.47
"	75.90	67.28	8.62	118	4153	9301	5/24/35	Sheffield,Ala.	Corinth,Miss.	6.18	3.78	2.40
"	27.14	24.08	3.06	119	4153	8435	5/18/35	Knoxville,Tenn.	"	4.97	4.31	.66
"	26.35	23.58	2.77	120	4159	7547	5/24/35	Corinth,Miss.	Coal Creek,Tenn.	11.90	10.24	1.66
"	1.19	1.10	.09	121	4980	10455	7/22/35	Coal Creek,Tenn.	Corinth,Miss.	5.53	4.78	.75
"	83.98	77.41	6.57	122	4980	10442	7/20/35	Knoxville,Tenn.	"	1.74	1.50	.24
"	10.56	9.73	.83	123	4980	9503	7/26/35	Sheffield,Ala.	"	2.37	1.52	.85
"	47.54	43.44	4.10	124	4980	9494	7/24/35	"	"	6.09	3.91	2.18
"	8.20	7.17	1.03	125	4980	9489	7/23/35	"	"	4.28	2.76	1.52
Corinth, Miss.	54.50	35.24	19.26	126	4980	9506	7/26/35	"	"	3.47	2.24	1.23
Town Creek, Ala.	50.46	47.98	2.48	127	5144	9473	7/15/35	"	"	3.51	2.26	1.25
Corinth, Miss.	27.12	17.49	9.63	128	5144	9432	7/ 8/35	"	"	1.30	.84	.46
"	3.16	2.03	1.13	129	5144	10338	7/10/35	Knoxville,Tenn.	"	6.02	5.24	.78
"	4.17	3.65	.52	130	5739	7435	7/31/35	Clinton,Tenn.	"	1.55	1.30	.25
"	74.44	65.33	9.11	131	5739	7434	7/29/35	"	"	1.13	.98	.15
"	27.61	23.15	4.46	132	5739	7432	7/26/35	"	"	25.99	22.25	3.74
"	38.71	37.20	1.51	133	5934	9572	8/ 8/35	Sheffield,Ala.	"	1.56	1.01	.55
"	3.70	2.67	1.03	134	5934	9602	8/17/35	"	"	1.52	.98	.54
"	24.17	15.30	8.87	135	5934	9604	8/17/35	"	"	2.90	1.87	1.03
"	20.19	15.51	4.68	136	5934	9617	8/21/35	"	"	4.13	2.66	1.47
"	19.42	14.87	4.55	137	5934	9622	8/23/35	"	"	1.50	.97	.53
"	4.69	3.55	1.14	138	5934	10339	8/26/35	Coal Creek,Tenn.	"	23.62	20.42	3.20
"	213.52	167.48	46.04	139	7866	11937	11/ 7/35	"	"	28.93	25.04	3.89
"	40.15	25.89	14.26	140	7866	12077	11/12/35	Sheffield,Ala.	"	1.25	.81	.44
"	98.32	84.68	13.64	141	7928	8131	10/25/35	Courtland,Ala.	"	7.02	4.25	2.77
"	1.17	.99	.18	142	7928	8133	10/30/35	Athens,Ala.	"	15.47	8.33	7.14
"	6.35	4.09	2.26	143	7928	11846	10/24/35	Coal Creek,Tenn.	"	13.24	11.45	1.79
"	1.97	1.27	.70	144	7928	12014	10/23/35	Sheffield,Ala.	"	.50	.31	.19
"	30.04	25.28	4.76	145	7928	12026	10/25/35	"	"	4.64	3.01	1.63
"	125.77	107.01	18.76	146	7928	12032	10/28/35	"	"	1.15	.73	.42
"	33.54	28.14	5.40	147	7928	12038	10/30/35	"	"	7.19	4.64	2.55
"	2.01	1.29	.72	148	7928	12044	11/ 1/35	Wheeler,Ala.	"	.93	.56	.37
"	2.58	1.67	.91	149	7928	12048	11/ 1/35	Sheffield,Ala.	"	6.23	4.02	2.21
"	3.76	2.43	1.33	150	7928	12050	11/ 4/35	"	"	4.95	3.18	1.77
"	4.76	3.07	1.69	151	7928	12061	11/ 5/35	"	"	.81	.52	.29
"	9.50	8.10	1.40	152	7928	12065	11/ 6/35	"	"	1.60	1.05	.55
"	41.94	27.04	14.90	153	8122	12070	11/ 8/35	"	"	.79	.51	.28
"	29.97	19.32	10.65	154	8122	12677	11/14/35	Coal Creek,Tenn.	"	2.23	1.93	.30
"	2.99	1.93	1.06	155	8122	11897	10/31/35	"	"	.57	.49	.08
"	1.04	0.87	0.17	156	8122	12665	11/11/35	Knoxville,Tenn.	"	2.53	2.19	.34
"	16.24	14.06	2.18	157	8122	12658	11/11/35	Coal Creek,Tenn.	Corinth,Miss.	30.64	26.52	4.12
"	2.57	2.14	0.43	158	8124	11986	11/11/35	"	"	99.69	86.25	13.44
"	4.76	3.52	1.24	159	8126	12075	11/11/35	Sheffield,Ala.	"	45.82	29.55	16.27
"	8.06	5.20	2.86	160	8127	1.105	11/25/35	"	Huntsville,Ala.	1.91	1.60	.31
Town Creek, Ala.	26.18	24.08	2.10	161	8139	11166	11/ 1/35	Alliance,Ohio	Sheffield,Ala.	535.81	509.90	25.91
Clinton, Tenn.	17.99	16.58	1.41	162	8141	11952	11/11/35	Memphis,Tenn.	"	230.35	155.31	75.04
Corinth, Miss.	2.95	2.52	0.43	163	8832	11956	11/12/35	"	"	189.00	127.42	61.58
"	4.45	3.80	0.65	164	9165	12190	12/19/35	Sheffield,Ala.	Decatur,Ala.	58.34	44.92	13.42
"	54.66	46.79	7.87	165	9219	11922	12/24/35	Cincinnati,Ohio	Sheffield,Ala.	68.66	61.23	7.43
"	2.85	2.40	0.45	166	9225	12110	11/29/35	Corinth,Miss.	"	10.63	7.21	3.42
"	3.52	2.98	.54	167	9225	12103	11/27/35	"	"	6.40	4.33	2.07
"	9.20	5.84	3.36	168	9253	12205	12/24/35	Sheffield,Ala.	Decatur,Ala.	1.66	1.28	.38
"	6.40	4.08	2.32	169	9254	12197	12/21/35	"	"	1.62	1.25	.37
"	7.40	4.70	2.70	170	9260	12148	12/11/35	Corinth,Miss.	Sheffield,Ala.	1.65	.99	.66
"	1.84	1.19	.65	171	9260	8185	12/ 9/35	"	"	6.32	3.77	2.55
"	1.91	1.21	.70	172	9449	12193	12/20/35	Sheffield,Ala.	Corinth,Miss.	1.68	1.08	.60
"	9.24	5.51	3.73	173	9449	12147	12/ 7/35	"	"	2.10	1.36	.74
"	.82	.72	.10	174	9925	8252	1/ 7/36	Town Creek,Ala.	"	10.34	6.26	4.08
"	.97	.84	.13	175	10036	12240	1/21/36	Corinth,Miss.	Paint Rock,Ala.	96.30	60.43	35.87
"	30.96	26.40	4.56	176	10232	8270	1/17/36	"	Lone Mountain,Tenn.	105.77	94.17	11.60
"	6.42	5.47	.95	177	10236	8267	1/13/36	Iuka,Miss.	Chattanooga,Tenn.	117.13	72.81	44.32
"	2.68	1.66	1.02	178	10239	8260	1/11/36	Corinth,Miss.	Paint Rock,Ala.	4.66	2.74	1.92
"	31.08	19.68	11.40	179	10287	8293	1/18/36	Sheffield,Ala.	Corinth,Miss.	4.16	2.68	1.48
"	5.35	3.39	1.96	180	10288	13335	1/13/36	Coal Creek,Tenn.	"	124.61	107.80	16.81
Town Creek, Ala.	3.61	3.36	.25	181	10292	8216	12/31/35	Town Creek,Ala.	"	2.43	1.47	.96
"	.81	.74	.07	182	10293	12238	1/ 6/36	Sheffield,Ala.	"	1.22	.79	.43
"	5.45	5.00	.45	183	10402	12875	12/ 3/35	Anniston,Ala.	"	360.95	329.01	31.94
"	4.64	4.26	.38	184	107	12291	2/ 3/36	Corinth,Miss.	Sheffield,Ala.	2.40	1.62	.78
"	4.53	4.15	.38	185	156	8291	1/17/36	Sheffield,Ala.	Corinth,Miss.	57.12	36.99	20.13
"	23.22	21.50	1.72	186	158	13440	1/28/36	Anniston,Ala.	"	121.79	110.81	10.98
"	5.92	4.77	1.15	187	160	12289	2/ 3/36	Corinth,Miss.	Paint Rock,Ala.	25.84	15.39	10.45
"	3.49	3.24	.25	188	995	9017	3/26/36	Chattanooga,Tenn.	Iuka,Miss.	85.79	69.46	16.33
Sheffield, Ala.	138.88	104.04	34.84	189	1018	13971	2/25/36	Coal Creek,Tenn.	Corinth,Miss.	8.09	7.22	.87
Corinth, Miss.	6.06	5.36	.70	190	1018	12399	2/21/36	Sheffield,Ala.	"	.52	.30	.22
"	.84	.53	.31	191	1018	12408	2/21/36	"	"	3.91	2.26	1.65
"	14.53	9.20	5.33	192	1018	14314	2/28/36	Coal Creek,Tenn.	"	3.68	3.28	.40
"	1.00	.62	.38	193	1062	12374	3/ 9/36	Louisville,Ky.	Paint Rock,Ala.	127.12	95.22	31.90
"	2.05	1.32	.73	194	1259	12479	3/11/36	Paint Rock,Ala.	Corinth,Miss.	2.07	1.19	.88
"	2.99	1.89	1.10	195	1259	12420	2/25/36	Sheffield,Ala.	"	.99	.52	.47
"	3.78	2.38	1.40	196	1259	12482	3/10/36	"	"	3.15	2.07	1.08
"	4.70	2.97	1.73	197	1595	14428	3/23/36	"	"	2.83	1.83	1.00
"	2.36	2.03	.33	198	1595	12549	3/18/36	"	"	7.42	4.79	2.63
"	3.12	2.62	.50	199	1694	12518	3/13/36	Corinth,Miss.	Sheffield,Ala.	3.70	2.09	1.61
Coal Creek, Tenn.	172.54	144.54	28.00	200	1902	10552	3/19/36	"	"	109.51	75.90	33.61
"	198.96	166.32	32.64	201	2055	12466	3/10/36	"	Paint Rock,Ala.	1.54	.85	.69
"	168.72	141.38	27.34	202	2055	14524	4/ 7/36	"	"	8.70	4.82	3.88
Corinth, Miss.	15.98	14.01	1.97	203	2055	14509	4/ 6/36	"	"	4.00	2.22	1.78
"	33.21	24.36	8.85	204	2732	14487	4/ 1/36	Sheffield,Ala.	Corinth,Miss.	2.91	1.41	1.50
"	11.02	10.16	.86	205	2732	14564	4/14/36	"	"	.90	.51	.39
Town Creek, Ala.	2.30	2.13	.17	206	2732	14514	4/ 4/36	"	"	1.66	.86	.80
"	1.30	1.22	.08	207	2732	15477	4/15/36	Coal Creek,Tenn.	"	10.80	9.44	1.36
"	7.92	7.24	.68	208	2732	15479	4/15/36	"	"	29.97	27.12	2.85
"	32.12	29.57	2.55	209	3072	14631	4/24/36	Sheffield,Ala.	Corinth,Miss.	59.04	39.22	19.82
"	1.05	.95	.10	210	3188	15853	5/ 4/36	Coal Creek,Tenn.	"	3.18	2.40	.78
"	25.29	22.87	2.42	211	3188	14818	5/ 2/36	"	"	2.08	1.86	.22
"	25.29	22.87	2.42	212	3188	14723	5/ 8/36	Sheffield,Ala.	"	3.43	2.16	1.27
Town Creek, Ala.	57.29	52.55	4.74	213	3383	14639	4/27/36	Corinth,Miss.	Paint Rock,Ala.	19.80	9.78	10.02
Corinth, Miss.	3.75	2.42	1.33	214	4501	16340	6/13/36	"	"	16.12	9.12	7.00
"	1.25	.81	.44	215	4593	28167	5/17/37	Decatur,Ala.	Margerum,Ala.	121.07	94.93	26.14
"	2.52	1.62	.90	216	4594	28200	5/17/37	"	"	101.31	78.50	22.81
"	1.20	.77	.43	217	7180	28724	7/12/37	Sheffield,Ala.	Decatur,Ala.	125.59	96.70	28.89
"	8.35	5.38	2.97	218	8781	30617	8/20/37	"	"	9.38	6.39	2.99
"	9.28	5.98	3.30	219	9043	30706	8/28/37	"	"	4.22	2.94	1.28
"	8.69	7.54	1.15	220	12409	33663	11/20/37	Decatur,Ala.	Sheffield,Ala.	145.68	112.17	33.51
"	39.87	33.94	5.93	221	12409	33659	11/19/37	"	"	79.20	60.98	18.22
"	22.21	19.49	2.72	222	12822	33759	11/27/37	"	"	147.36	113.46	33.90
"	41.34	35.84	5.50	223	12822	33765	11/30/37	"	"	78.00	60.06	17.94
Town Creek, Ala.	7.58	6.77	.81	224	13319	33927	12/13/37	"	"	79.08	60.89	18.19
Corinth, Miss.	1.91	1.65	.26	225	13881	34076	12/22/37	Margerum,Ala.	Decatur,Ala.	454.28	350.83	103.45
"	7.53	6.52	1.01	226	562	34394	1/27/38	Sheffield,Ala.	"	47.44	36.53	10.91
"	1.85	1.19	.66	227	1939	36372	2/17/38	Decatur,Ala.	Sheffield,Ala.	122.47	89.32	33.15
"	14.54	9.38	5.16						Totals	$8,984.69	$7,467.48	$1,517.21

are proper. The defendant, in paying for the transportation and making the deduction of $58.24, used a route as follows: Sheffield to Parrish via Northern Alabama Railway; Parrish to Birmingham via Southern Ry.; Louisville & Nashville R. R. beyond to destination. The Louisville & Nashville R. R. portion is land-aided. The through distance over the route so used is 222.4 miles, and this route is not used by commercial traffic.

17. The shipments covered by items Nos. 220, 221, 222, 223, 224, 227, a total difference in dispute of $154.91, moved via the Southern Ry. from Decatur to Sheffield, Ala.

The circumstances here are the same as set forth in Finding No. 16, with directions reversed.

18. The shipments on items 86, 87, and 88 were from Chicago, Illinois, to Coal Creek, Tennessee. The aggregate [fol. 52] claimed thereon is $87.98. The shipments actually moved by way of the Chicago, Burlington & Quincy R. R. to Paducah, Ky.; Nashville, Chattanooga & St. Louis Ry. to Nashville; Tennessee Central Ry. to Harriman; thence via Southern Railway to Coal Creek, a total distance of 875.2 miles.

In billing defendant the plaintiff offered net freight charges calculated by way of Cairo, Hopkinsville, Nashville, Lebanon, Harriman; the land-aided portion of which extended only from Chicago to Cairo on the Illinois Central R. R., a total distance from Chicago to Coal Creek of 760.7 miles. The defendant's deduction of $87.98 from plaintiff's bill was calculated by using the Cairo gateway, as had the plaintiff. The route used beyond Cairo was different. Defendant used the Mobile & Ohio R. R., Cairo to Meridian, the Alabama Great Southern R. R. to Chattanooga, and the Southern Ry. thence to destination. The land-grant portion of the route so used extended from Chicago to Cairo, the Tennessee-Mississippi State Line to Meridian, and the Alabama-Mississippi State Line to the Alabama-Georgia State Line, a through distance from Chicago to Coal Creek of 1,172.05 miles.

The route made use of by defendant in its calculation is not employed in commercial traffic.

There were alternative routes beyond Cairo; not employed by either party, which would result in higher charges than contended for by defendant, and lower than claimed

and that said tariffs and agreement are silent on the matter of distance limitations, then there is no fixed basis upon which plaintiff and defendant can agree for the computation [fol. 42] of net charges in the absence of a determination by the Court of such mileage limitations as it may find to be proper within the contemplation of said tariffs and land-grant equalization agreement; but when said limitations, if any, are determined by the Court, charges in accordance therewith will be computed by the parties, and if in agreement, will be for stipulation as to the amount due the plaintiff or the defendant, as the case may be."

First Cause of Action

Federal Surplus Relief Corporation

(*Exhibit No. 4 to the Petition*)

4. In the summer months of the year 1934, the Federal Surplus Relief Corporation, as consignor and duly authorized agent of the United States, shipped over plaintiff's lines and its connections 147 shipments of livestock which are listed in Exhibit No. 4 to the petition, property of the United States, from points in Minnesota, Kansas, Illinois, Iowa, Missouri, Wisconsin, and Nebraska to points in North Carolina, South Carolina, Georgia, Tennessee, and Virginia. Each shipment was transported and delivered in accordance with what is known as "uniform livestock contracts." Upon delivery of the shipments at destinations, the uniform livestock contracts were surrendered to the delivering carrier together with stickers attached thereto reading in part as follows:

> Property of the Federal Government.
> Carriers' charges to be collected from the Federal Surplus Relief Corporation, Washington, D. C., in the same manner as if under a Government Bill of Lading.

5. For the transportation services so performed plaintiff submitted its bills on which it claimed freight charges totaling $88,481.89, of which aggregate defendant paid plaintiff $78,584.99, leaving a balance of $9,896.90 unpaid. Plaintiff abandons claim on items Nos. 8, 25, 45, 56, 65, 66, 75, 76, 77, 97, 101, 102, 103, 104, 109, 114 and 144 of Exhibit No.

by plaintiff. Commercial shipments do not use the alternative routes. They are illustrated by plaintiff's Exhibit No. 44, which is made part hereof by reference, and not further particularized.

19. The shipment covered by item 177 of Exhibit No. 8 to the petition moved from Iuka, Miss., to Chattanooga, over plaintiff's line. There is claimed on this item $44.32. The distance is 200.5 miles, without land-grant mileage, and the gross commercial charge was billed against defendant. In making payment defendant deducted $44.32, using therefor a land-grant route as follows: Southern Ry. to Corinth (non-land-grant) 22.3 miles; Mobile & Ohio R. R. to Meridian (land-grant) 194.12 miles; Alabama Great Southern R. R. to Chattanooga (land-grant Alabama-Mississippi State Line to Alabama-Georgia State line) 298.9 miles, a total distance of 513.32 miles. The land-grant route, so constructed, is not used by commercial traffic. [fol. 53] There are alternative routes from Iuka to Chattanooga involving land grants that would if used in the calculation result in lower charges than asserted by plaintiff and in higher charges than here computed by defendant. These alternative routes are indicated in plaintiff's Exhibit No. 40, which is made part hereof by reference. They are not routes used by commercial traffic, and are not further evidenced by particulars.

20. The shipments covered by items Nos. 175, 178, 187, 201, 202, 203, 213, and 214 in Exhibit No. 8 to the petition, moved from Corinth, Miss., to Paint Rock, Ala., over plaintiff's line, a non-land-grant route, a distance of 143.4 miles. The difference deducted and claimed aggregates $71.61. Plaintiff billed at full commercial rates. Defendant applied a land-grant route for equalization purposes as follows: Corinth to Meridian via Mobile & Ohio R. R. (land-grant) 194.12 miles; Meridian to Chattanooga via Alabama Great Southern R. R. (land-grant Alabama-Mississippi State Line to Alabama-Georgia State Line) 298.8 miles; Chattanooga to Paint Rock via Southern Ry. (non-land-grant) 79.4 miles, a through distance of 572.32 miles.

No commercial shipments move by way of the route used by defendant.

There are alternative land-grant routes that would result in lower charges than claimed by plaintiff and higher than

4 to the petition, totaling $384.68, leaving a balance of $9,512.22 now claimed by it to be due and unpaid.

6. The through commercial charges from points of origin to destination on the shipments listed in Exhibit No. 4 to the petition, except those indicated therein as having originated at East St. Louis (National Stock Yards), Illinois, are com- [fol. 43] puted by both parties by combining charges from point of origin to Cairo, Illinois, with charges therefrom to destination. The controversy as to the net charges so combined relates solely to the question whether equalization with land-grant routes south of Cairo requires any deductions from commercial, that is to say, full face tariff charges, and if so, to what extent.

Those shipments indicated in Exhibit No. 4 to the petition as having originated at East St. Louis (National Stock Yards), Illinois, moved to their respective destinations under through rates published as such, and as to the gross amount thereof there is no dispute. The correctness of the proportion of the respective through rates and the land-grant deductions therefrom applied by the defendant north of Cairo in the computation of the amounts paid plaintiff is likewise not disputed.

The applicable tariff did not impose any distance limitations upon the application of the commercial rates published therein, which rates were applicable also on like commercial shipments between Cairo and East St. Louis (National Stock Yards), Illinois, as points of origin, and the respective destinations listed in Exhibit 4 to the petition, via the land-aided routes used by defendant in computing the charges payable under the equalization agreement.

7. The net rates claimed by plaintiff, and the net rates used and claimed by defendant, were in neither case computed over the routes by way of which the shipments actually moved. The routes of actual movement were in each instance shorter in distance and time than the routes used in the net rate calculations.

The route now constructed and used for equalization purposes by plaintiff from Cairo is as follows:

> Illinois Central R. R. to Martin, Tenn.; thence via Nashville, Chattanooga & St. Louis Ry. to Nashville, Tenn.; thence via Tennessee Central R. R. to Harriman, Tenn.; thence via plaintiff's line.

those paid by defendant. These alternative routes are not used by commercial traffic.

Plaintiff's Exhibit No. 46, made part hereof by reference, illustrates these alternative routes in yellow lines. They are not the subject of further particulars.

21. The shipments listed in items 75, 162, 163 of Exhibit No. 8 to the petition moved from Memphis, Tenn., to Sheffield, Ala., entirely over plaintiff's non-land-grant line, a distance of 147.2 miles. Plaintiff billed the Government at full commercial charges, from which the Government in payment deducted $171.46 by way of land-grant equalization.

The shipment on item No. 75, $34.84, consisted of wrought-iron pipe. For land-grant equalization purposes defendant used the following route: Memphis to Meridian via Mobile & Ohio R. R., 287.02 miles (land-grant Corinth to Meridian); Meridian to Birmingham via Alabama Great Southern [fol. 54] R. R., 153.3 miles (land-grant Alabama-Mississippi State Line to Birmingham); Birmingham to Parrish via Southern Ry. (non-land-grant) 42.1 miles; Parrish to Sheffield via Northern Alabama Ry. (non-land-grant) 95.3 miles, a through mileage of 577.72 miles.

On items Nos. 162 and 163, $136.62, the shipments consisted of various articles. The defendant, for land-grant equalization purposes, used a route as follows: Memphis to Meridian, via Mobile & Ohio R. R., 287.02 miles (land-grant Corinth to Meridian); Meridian, Miss., to Attalla, Ala., via Alabama Great Southern R. R., 209.2 miles (land-grant Alabama-Mississippi State Line to Attalla); Attalla to Sheffield via Southern Ry. (non-land-grant) 306.1 miles, total distance 802.32 miles.

Commercial shipments do not move over the routes used by defendant in its calculations.

22. On items 215 and 216 of Exhibit No. 8 to the petition the shipments were from Decatur, Ala., to Margerum, Ala., a distance of 67.5 miles over plaintiff's line, by which they actually moved. This was a non-land-grant route and plaintiff billed at full commercial rates, i. e., without land-grant deduction. In payment defendant deducted $48.95 on account of land-grant equalization, arriving at this deduction by use of the following route: Decatur to Birmingham via Louisville & Nashville R. R., 85 miles (a land-aided road);

This route included no land-aided line beyond Cairo. In certain instances plaintiff, however, in submitting its bills to defendant made some deductions south of Cairo for land-grant equalization, but less in amount than applied by the defendant in payment of plaintiff's bills. These particular [fol. 44] deductions were inadvertently made by plaintiff's clerks and are not representative of plaintiff's practice.

8. On shipments covered by items 121, 141, 142, and 143 of Exhibit No. 4 to the petition, defendant, for the purpose of computing rates, used its route from Cairo as follows:

> Mobile & Ohio R. R. to Meridian, Miss.; thence via Alabama Great Southern R. R. to Birmingham, Ala.; thence via Louisville & Nashville R. R. to Montgomery, Ala.; thence via Central of Georgia Ry. to Columbus, Ga.; thence via plaintiff's line.

On all other shipments listed in Exhibit No. 4 to the petition defendant used for computation of freight rate a route from Cairo as follows:

> Mobile & Ohio R. R. to Meridian; thence via Alabama Great Southern R. R. to Birmingham; thence via Louisville & Nashville R. R. to Calera, Ala.; thence via plaintiff's line.

The routes so used by defendant included certain land-aided mileage of the Mobile & Ohio R. R. between Cairo and Meridian, of the Alabama Great Southern R. R. between Meridian and Chattanooga, of the Louisville & Nashville R. R. between Birmingham and Montgomery, of the Central of Georgia Ry. between Montgomery and Columbus, and of the Southern Ry. between Calera, Ala., and Spartanburg, S. C.

The shipments on item 119 of Exhibit No. 4 to the petition, South St. Paul, Minn., to St. Matthews, S. C., on items 21 and 22 from Sioux City, Ia., to Asheville, N. C., on item 69, South St. Paul to Asheville and on item 9, South St. Paul to Ninety Six, S. C., moved via Cairo, Ill. All other shipments moved via junctions other than Cairo, such as Cincinnati or Elkhorn City.

9. The following table shows approximately, in respect to the various items of Exhibit No. 4 to the petition, (a) the number of miles via route of actual movement, (b) the mile-

Birmingham to Parrish via Southern Ry., 42.1 miles (non-land-grant); Parrish to Sheffield via Northern Alabama Ry., 95.3 miles (non-land-grant); Sheffield to Margerum via Southern Ry., 23.6 miles (non-land-grant), a total distance of 246 miles.

The route so used by defendant is not in use by commercial traffic.

For further matter in connection with these items see Findings No. 13, *supra*.

23. Item 225 of Exhibit No. 8 to the petition covers a shipment from Margerum to Decatur, Ala., difference of $103.45.

The same facts are present in regard to this item as in regard to items Nos. 215 and 216 described in Finding No. 22, *supra*, with directions reversed.

For further matter in connection with this item see Finding No. 13.

[fol. 55] Third Cause of Action

Department of the Treasury

Department of War

Department of Agriculture

(Exhibit No. 9 to the Petition)

24. In the year 1936 duly authorized representatives of defendant shipped over plaintiff's lines of railway and those of its connections certain Government property from Springfield, Ohio, to Gainesville, Ga., from Kansas City, Mo., to Ft. McClellan, Ala., and from Springfield, Ohio, to Sumter, S. C., on Government bills of lading, and the shipments so consigned were delivered by plaintiff in accordance with the billing.

The items are listed by number in Exhibit No. 9 to the petition, and those now claimed are as follows, all other items being abandoned by plaintiff:

Treasury—	
Item 24, Springfield to Sumter	$144.19
War—	
Items 21 and 22, Kansas City to Ft. McClellan	42.60
Agriculture—	
Item 5, Springfield to Gainesville	137.98
Total	324.77

ge via plaintiff's rate-making route, (c) the mileage via defendant's rate-making route, and (d) the mileage by which c) exceeds (a).

There is no satisfactory proof as to excess mileage, if any, with respect to Item No. 134 of Exhibit No. 4 to the petition, n which plaintiff claims $63.42, Item No. 105, $77.40, and tem No. 120, $59.41, and these items are not included in he tabulation.

ol. 45]

Item	(a)	(b)	(c)	(d)
	721.70	756.50	1,178.45	456.75
	1,491.20	1,530.90	1,860.05	368.85
	707.90	742.70	1,208.85	500.95
	1,255.40	1,311.60	1,777.75	522.35
	1,255.40	1,311.60	1,777.75	522.35
	1,255.40	1,311.60	1,777.75	522.35
	707.90	742.70	1,208.85	500.95
	1,513.00	1,453.30	1,722.45	209.45
0	1,149.40	1,287.20	1,753.35	603.95
1	1,142.60	1,292.70	1,758.85	616.25
2	1,149.40	1,287.20	1,753.35	603.95
3	1,149.40	1,287.20	1,753.35	603.95
4	1,142.60	1,292.70	1,758.85	616.25
5	1,627.70	1,612.60	1,990.15	362.45
6	1,627.70	1,612.60	1,990.15	362.45
7	1,433.70	1,379.00	1,801.55	367.85
8	740.60	908.70	1,374.85	634.25
9	740.60	908.70	1,374.85	634.25
0	740.60	908.70	1,374.85	634.25
1	1,411.80	1,327.90	1,794.05	382.25
2	1,411.80	1,327.90	1,794.05	382.25
3	1,387.00	1,366.10	1,788.05	401.05
4	765.00	933.10	1,399.25	634.25
5	789.90	958.00	1,355.95	566.05
7	1,341.83	1,449.40	1,644.95	303.12
8	1,355.50	1,449.40	1,779.15	423.65
9	1,341.83	1,449.40	1,644.95	303.12
0	713.90	748.70	1,214.85	500.95
	716.60	884.70	1,398.85	682.25
2	1,655.00	1,634.10	2,011.65	356.65
3	1,457.40	1,463.30	1,793.05	335.65
	985.20	1,116.80	1,446.55	461.35
6	1,025.30	1,193.40	1,570.95	545.65
	1,655.00	1,634.10	2,011.65	356.65
	1,333.50	1,410.30	1,740.05	406.55
5	1,297.10	1,383.70	1,713.45	416.35
0	1,297.10	1,383.70	1,713.45	416.35
	985.20	1,116.80	1,446.55	461.35
	1,663.53	1,527.70	1,905.25	241.72
2	1,460.00	1,620.30	1,901.75	441.75
3	1,655.00	1,634.10	2,011.65	356.65
	1,231.40	1,292.70	1,758.85	527.45
	1,282.83	1,389.40	1,719.15	436.32
	1,282.83	1,389.40	1,719.15	436.32
	1,290.60	1,383.90	1,713.65	423.05
	1,276.93	1,383.90	1,713.65	436.72
	1,388.60	1,389.40	1,719.15	330.55

The amount of $324.77 represents deductions made by defendant from freight charges billed and claimed by plaintiff for the transportation performed.

The deductions were erroneously made under paragraph 3 (b) of the freight equalization agreement and defendant concedes that plaintiff is entitled to recover the said sum of $324.77.

Conclusion of Law

Upon the foregoing special findings of fact, which are made a part of the judgment herein, the court concludes as a matter of law that plaintiff is entitled to recover $386.83.

The court further concludes as a matter of law that the defendant is entitled to recover on its counterclaim from the plaintiff the sum of $1,638.56.

[fol. 56] It is therefore ordered and adjudged that the defendant recover of and from the plaintiff the sum of one thousand two hundred fifty-one dollars and seventy-three cents ($1,251.73).

Opinion

Littleton, *Judge*, delivered the opinion of the court:

The pertinent provisions of Paragraphs 1 and 2 (a) of the Land-grant Equalization Agreement are set forth in finding 2. The dispute concerns only the section of land-grant routes for the purpose of determining the proper freight charges to the defendant under the terms of this agreement for government shipments made over plaintiff's lines and its connections. Plaintiff was not a land-grant railroad and it was for this reason that it entered into the equalization agreement referred to. The question in issue is, did the agreement between the parties provide for or require freight charges to the government for transportation of the shipments of government property over the actual routes of movement based upon lawful rates on file with the Interstate Commerce Commission, less deductions for land-grant over the land-aided or land-grant routes affording the lowest net rates, or on some other basis.

The parties stipulate that "The sole issue presented in the first cause of action involves the determination of an available land-aided route south of Cairo, Ill., in accordance with the terms of the plaintiff's freight land-grant equalization agreement, for the purpose of establishing in pertinent part charges for transporting the shipments, listed in said

Item	(a)	(b)	(c)	(d)
51	1,439.40	1,445.30	1,756.75	317.35
52	1,667.20	1,474.90	1,804.65	137.45
53	1,382.40	1,475.70	1,805.45	423.05
54	1,499.70	1,539.40	1,868.55	368.85
55	1,572.30	1,593.00	1,917.15	344.85
57	1,525.60	1,628.40	2,005.95	480.35
58	1,001.40	1,036.20	1,413.75	412.35
59	907.50	993.70	1,459.85	552.35
60	1,228.43	1,287.20	1,753.35	524.92
61	1,565.50	1,326.60	1,748.55	183.05
62	1,301.20	1,332.10	1,754.05	452.85
63	1,390.30	1,421.40	1,850.15	459.85
64	1,390.30	1,421.40	1,850.15	459.85
67	1,247.90	1,379.00	1,801.55	553.65
68	1,246.20	1,292.70	1,758.85	512.65
69	1,332.60	1,287.20	1,753.35	420.75
70	1,195.60	1,317.10	1,802.83	607.23
71	1,268.53	1,376.10	1,705.85	437.32
72	1,302.80	1,373.40	1,703.75	400.35
73	1,164.20	1,491.70	1,821.45	657.25
74	1,698.63	1,557.80	1,907.15	208.52
78	1,545.30	1,598.90	1,976.45	431.15
79	1,444.60	1,336.50	1,734.45	289.85
80	1,303.33	1,410.30	1,740.05	436.72
81	1,295.00	1,597.70	1,841.05	546.05
82	1,543.70	1,492.90	1,870.45	326.75
83	1,449.90	1,496.40	1,873.95	424.05
84	1,449.90	1,496.40	1,874.95	424.05
85	1,349.40	1,311.60	1,777.75	428.35
86	1,255.40	1,311.60	1,777.75	522.35
87	1,368.60	1,358.90	1,688.65	320.05
[fol. 46]				
88	1,448.70	1,485.00	1,753.35	304.65
89	1,581.00	1,515.60	1,844.75	263.75
90	1,444.60	1,336.50	1,734.45	289.85
91	1,324.60	1,330.90	1,752.85	428.25
92	1,307.30	1,360.90	1,690.65	383.35
93	1,263.50	1,353.40	1,683.15	419.65
94	1,280.00	1,353.40	1,683.15	403.15
95	1,388.30	1,358.90	1,688.65	300.35
96	1,252.80	1,358.90	1,688.65	435.85
98	1,307.30	1,360.90	1,690.65	383.35
99	989.20	1,061.90	1,391.65	402.45
100	1,384.30	1,454.90	1,784.65	400.35
106	1,298.10	1,354.30	1,820.45	522.35
107	1,379.93	1,400.90	1,804.35	424.42
108	1,379.93	1,400.90	1,804.35	424.42
110	1,379.93	1,400.90	1,804.35	424.42
111	1,379.93	1,400.90	1,804.35	424.42
112	1,457.90	1,504.40	2,011.25	553.35
113	1,451.90	1,454.40	1,843.05	391.15
115	1,246.20	1,292.70	1,758.85	512.65
116	1,246.20	1,292.70	1,758.85	512.65
117	1,255.40	1,311.60	1,777.75	522.35
118	721.70	756.50	1,179.05	457.35
119	1,606.70	1,486.20	1,820.90	214.20
121	1,377.70	1,409.60	1,945.75	568.05
122	1,754.50	1,523.10	1,900.65	146.15
123	1,755.50	1,522.10	1,899.65	144.15
124	1,755.50	1,522.10	1,899.65	144.15
125	1,228.43	1,287.20	1,753.35	524.92
126	1,584.80	1,517.00	1,847.95	263.15

Exhibit 4 to the petition, over the actual routes of movement." As to the second cause of action, the parties stipulate that "There is no controversy respecting the amount of the commercial rates used by the plaintiff and the defendant, nor is there any dispute as to the fact that the net amounts indicated by the defendant as properly payable have been computed correctly over the land-aided routes used by the defendant as a basis for such payments. The sole issue is the selection of an available land-aided route, if any, in accordance with the terms of the plaintiff's freight land-grant equalization agreement, for the purpose of establishing charges for transporting the shipments, listed in Exhibit 8 (to the petition), over the actual routes of movement."

[fol. 57] The third cause of action has been settled by stipulation and presents no controversy. See Finding 24.

The provision of the agreement in question seems plain enough without resort to construction when it is interpreted according to the ordinary signification of the language used, but plaintiff contends that under a proper construction of the agreement based on what it contends was the intention of the parties, it agreed only to equalize net freight rates computed via *competitive* routes, that is, routes which are in fact competitive in the ordinary commercial sense, and that it did not agree and is not required to equalize to the government net rates computed in each case via the land-grant route from point of origin to destination in fact producing the lowest net rate, regardless of whether such route is in fact commercially competitive and regardless of how circuitous and impractical it may be. In addition plaintiff asks the court to define the term "competitive routes." The unambiguous language of the equalization agreement expresses the final intention of the parties as to the routes and rates and the legal import of such language is opposed to plaintiff's contention. Simply stated, the plaintiff by Paragraph 1 of the equalization agreement stipulated without qualification or exception to accept for the transportation of government property the lowest net rates lawfully available over land-aided routes. By its express terms the agreement prescribed this measure of reduced commercial tariff rates to the equalizing carrier as the basis for computing freight charges for the transportation of government property over the actual route of movement. Except as reflected

127	1,566.50	1,499.10	1,828.25	261.75
128	1,507.06	1,498.70	1,793.65	286.59
129	1,310.50	1,357.00	1,825.95	515.45
130	1,390.30	1,421.40	1,850.15	459.85
131	1,337.10	1,573.50	1,941.25	604.15
132	1,657.80	1,516.60	1,894.15	236.35
133	1,657.80	1,516.60	1,894.15	236.35
135	1,247.90	1,379.00	1,801.55	553.65
136	1,247.90	1,379.00	1,801.55	553.65
137	1,340.73	1,447.70	1,777.45	436.72
138	1,229.60	1,325.40	1,747.95	518.35
139	1,547.70	1,512.40	1,745.45	197.75
140	1,247.90	1,379.00	1,801.55	553.65
141	1,347.70	1,394.40	1,927.75	580.05
142	1,361.50	1,317.00	1,951.25	589.75
143	1,361.50	1,317.00	1,951.25	589.75
145	1,001.40	1,036.20	1,413.75	412.35
146	1,001.40	1,036.20	1,413.75	412.35
147	1,001.40	1,036.20	1,413.75	412.35

[fol. 46] 10. All the shipments covered by Exhibit No. 4 to the petition consisted of livestock, moved from drought-stricken areas to grazing lands in the South where it was possible for them to subsist. The number of cars in each shipment ranged from 1 to 19, with an average of 5 cars to a shipment.

The routes used by defendant for land-grant deduction purposes south of Cairo in computing net freight rates are not used by or for commercial traffic.

A map showing the land-grant lines south of Cairo, insofar as herein involved, routes used by plaintiff, routes used by the defendant, and alternative routes used by neither, applicable to the shipments listed in Exhibit No. 4 to the petition, and bearing on its face a legend identifying the [fol. 47] various routes, is filed in the case as plaintiff's Exhibit No. 26 and is made part hereof by reference.

The routes used by defendant in its calculations would have required, if the livestock had actually moved over them, two or three stops for feed, water, and rest, additional to those required on the route in fact traversed, and a minimum of three additional days in transit. The extra cost of feeding would have had to be borne by the shipper.

The livestock was shipped during July, August, and September, at a time of year that is hard on livestock in cattle cars.

The carriers' tariff requirements were for 200 pounds of feed per car for cattle at each stop for rest, feed, and water. The cost to defendant would have been in the neighborhood of $2.50 for 200 pounds of hay.

in the adjustments in defendant's counterclaim, the net freight charges due plaintiff were computed by defendant over land-grant routes lawfully available. The land-grant routes so selected and used for computation of rates by defendant under lawful tariffs on file with the Interstate Commerce Commission were admittedly available to the commercial public and to the government and could have been used for the making of all of the shipments in question. Beyond this the equalization agreement is silent as to the extent to which the land-grant routes to be selected must be commercially competitive or practical or as to the extent or limit of circuity of the land-aided routes which may be used to determine "the lowest net rates lawfully available." Paragraph 2 of the agreement provided for exceptions and [fol. 58] none that is pertinent here was made. It is not for the court to supply by construction the exceptions and limitations for which plaintiff contends when the agreement as written by clear and definite language specified, without qualification or restriction, the basis for determining the extent of the government's obligation for services rendered thereunder. Plaintiff seeks by construction to engraft upon the language of the contract a term or condition, i.e. "via competitive routes," which is not expressly or by necessary implication included therein. Compare *Louisville & Nashville R. R.* v. *United States*, 61 C. Cls. 1, in which the agreement provided for land-grant deductions "via the longest land-grant mileage * * * over usually traveled routes." With reference to competition and circuity of routing as to which the plaintiff's agreement is silent, it should be pointed out that a route which is competitive for commercial traffic may or may not be competitive for government traffic which is subject to reduced rates over lawfully available land-grant routes. In the transportation of government property the competition for it is between the non-land-grant or equalization agreement carriers. A land-grant route which the government might regard as entirely adequate for shipment of its property might not be regarded as a practical route over which commercial shippers not entitled to freight rate reductions ordinarily would elect to make their shipments. However, circuity routing is a well known factor in connection with transportation rates and is favored by carriers to secure traffic and by shippers to meet particular situations. These matters were well known to the parties

There are alternative routes not made use of either by plaintiff or by defendant, that would result in less net freight charges than claimed by plaintiff, and higher net freight charges than conceded by defendant. There is no evidence of any particulars with respect thereto.

11. If the routes used by defendant in calculation of net freight charges on Exhibit No. 4 to the petition are applicable under the Freight Land-grant Equalization Agreement there are due the defendant overpayments made by it to plaintiff on items (not now waived by plaintiff), of the exhibit in certain several amounts as follows:

Item:	Due	Item:	Due	Item:	Due
1	$7.48	36	$14.73	85	$94.51
3	7.09	41	13.57	86	21.81
4	8.32	42	10.13	90	65.36
5	7.91	43	10.28	91	6.68
11	11.23	57	3.66	95	4.12
13	43.48	58	47.98	96	14.53
15	9.79	63	6.63	98	4.34
16	4.21	64	19.92	105	15.79
17	41.75	67	43.02	106	56.74
18	5.29	68	104.71	107	18.82
19	25.75	69	7.49	108	14.94
21	47.25	78	38.38	110	6.76
22	35.43	79	41.62	111	6.89
24	2.74	81	3.50	112	3.70
26	59.63	82	12.54	113	15.36
30	10.05	83	13.96	116	16.19
32	9.83	84	14.42	117	9.31
[fol. 48]					
118	$7.37	131	$6.31	141	$1.02
120	45.08	132	7.81	142	13.90
121	60.27	133	10.91	143	21.88
122	49.78	134	48.73	145	10.01
123	8.18	135	7.57	146	10.01
124	8.09	136	7.57	147	50.02
129	23.95	139	.84		
130	7.99	140	6.65		
Total					1,533.56

On the same basis there are the following underpayments to plaintiff:

Item:	*Due*
7	$4.53
35	8.35
Total	12.88

The difference is an overpayment to plaintiff of $1,520.68, on items not now waived.

The net overpayment by defendant to plaintiff on the items sued on in the first cause of action, including some

when the equalization agreement was made, and they knew also that, according to custom, there was no mileage or distance limitation in any of the tariffs which fixed routes and rates lawfully available to the government as well as to the public, and they made none in the equalization agreement. Neither did the equalization agreement make any reference to the allowable percentage of circuity from point of origin to destination in determining deductions on account of land-grant distances. Under the agreement the lowest net rate lawfully available as derived through land-grant deductions is not conditioned in any case upon the character of the property shipped. The formula for determining the freight [fol. 59] rate which plaintiff agreed to accept is definitely set forth whether the property shipped be cattle or steel.

It would appear from the Regulations of the Quartermaster General, U. S. Army, issued in 1916 and existing at the time the agreement in question was made (see also, Act of July 5, 1884, 23 Stat. 107, 111), that any general or special limitation or qualification such as that for which plaintiff now contends was purposely left out of plaintiff's stipulation "to accept the lowest net rates lawfully available" to the Government over available land-grant routes. Those Regulations (Manual for the Quartermaster Corps, U. S. Army, 1916, App. No. 9, Vol. 2, p. 223; Quartermaster General Circular No. 15, May 18, 1922), provided in part as follows:

> Particular attention is invited to the special exceptions of certain carriers to both passenger and freight agreements. Where these special exceptions provide that the carriers shown in the margin will not equalize the lowest net rates available on certain specified traffic, such traffic should not be forwarded via the carriers shown, unless no other route is available. Where special exceptions provide that lowest available rate will not be protected via certain routes, such routes should not be used.

We cannot amend the agreement which the parties themselves elected to make, by undertaking to prescribe qualifications as to distance or percentage of circuity of available land-grant routes. As written, the equalization agreement is easily understood and simple of administration, and the

of those now waived by plaintiff, is $1,618.41 if the route used by defendant is held to be correct under the terms of the equalization agreement. Defendant makes counterclaim for this overpayment.

Second Cause of Action

Tennessee Valley Authority

(*Exhibit No. 8 to the Petition*)

12. Between July 24, 1934, and February 17, 1938, on behalf of the Tennessee Valley Authority, a duly authorized agency of the United States, there were shipped over plaintiff's lines and its connections 227 shipments of various kinds of Government property from and to the points listed in Exhibit No. 8 to the petition. All of these shipments were transported on Government bills of lading and were delivered by plaintiff in accordance therewith.

13. For the transportation service so rendered plaintiff submitted its bills on which it claimed freight charges totaling $8,984.69, of which amount defendant paid plaintiff $7,467.48, leaving a balance of $1,517.21 unpaid, as set forth in Exhibit No. 8 to the petition.

[fol. 49] Plaintiff now limits its claims to the following items of the exhibit, in the amounts indicated, and abandons claim as to all other items of the exhibit:

Item:	Claim	Item:	Claim	Item:	Claim
12	$19.26	104	$2.97	177	$44.32
14	9.63	105	3.30	178	1.92
15	1.13	113	.66	179	1.48
20	1.03	114	5.16	182	.43
21	8.87	115	1.10	184	.78
26	14.26	118	2.40	185	20.13
29	2.26	123	.85	187	10.45
30	.70	124	2.18	188	16.33
34	.72	125	1.52	190	.22
35	.91	126	1.23	191	1.65
36	1.33	127	1.25	195	.47
37	1.69	128	.46	196	1.08
39	14.90	133	.55	197	1.00
40	10.65	134	.54	198	2.63
41	1.06	135	1.03	199	1.61
46	2.86	136	1.47	200	33.61
54	3.36	137	.53	201	.69
55	2.32	140	.44	202	3.88
56	2.70	144	.19	203	1.78
57	.65	145	1.63	204	1.50
58	.70	146	.42	205	.39
59	3.73	147	2.55	206	.80
64	1.02	149	2.21	209	19.82
65	11.40	150	1.77	212	1.27

language used discloses that this was intended as one of the main objects of the agreement, whereas the construction for which plaintiff contends would unavoidably result in uncertainty, confusion, and constant controversy, as the facts in this case so clearly demonstrate. In between the routes used by defendant and the routes used by plaintiff, there are many alternative routes. Which shall be chosen if we depart from the clear and definite language of the equalization agreement which gives the government "the lowest net rates lawfully available * * * from point of origin to destination at time of movement"? The answer as to what other routes should be used can not be found in the equalization agreement and is impossible on the record as it stands, [fol. 60] and probably never could be arrived at, either administratively or judicially, with any degree of satisfaction without a detailed and expert inquiry into each case and the adoption of an arbitrary allowable percentage of circuity. We can find no justification or authority in the language or intention of the agreement for the selection by the court of some intermediate available route which produces a higher net freight rate to plaintiff than the "lowest net rate lawfully available, as derived through deductions account of land-grant distance from the lawful rates filed with the Interstate Commerce Commission applying from point of origin to destination." Any question as to whether it is unfair and unreasonable to require plaintiff to equalize net charges computed at lawful tariff rates via the land-grant routes used by defendant is foreclosed by the tariffs lawfully on file with the Interstate Commerce Commission. The question of reasonableness of tariff rates and routes is one over which this court has no jurisdiction. It has been committed by Congress to the Interstate Commerce Commission.

Under the equalization agreement and the routing instructions of the applicable lawful tariffs the defendant has, as shown by the findings, overpaid plaintiff a total of $1,638.56 on certain items of shipments and underpaid it a total of $386.83 on other items, or a net overpayment of $1,251.73, for which counterclaim is made. See findings 11, 13, and 24.

The amount of $386.83 which plaintiff is entitled to receive is less than the amount of the overpayment to it for which the defendant is entitled to recover $1,638.56 on its counterclaim. Judgment will therefore be entered in favor

Item:	Claim	Item:	Claim	Item:	Claim
66	1.96	151	.29	213	10.02
75	34.84	152	.55	214	7.0
77	.31	153	.28	215	26.14
78	5.33	159	16.27	216	22.81
79	.38	162	75.04	217	28.89
80	.73	163	61.58	218	2.99
81	1.10	164	13.42	219	1.28
82	1.40	166	3.42	220	33.51
83	1.73	167	2.07	221	18.22
86	28.00	168	.38	222	33.90
87	32.64	169	.37	223	17.94
88	27.34	170	.66	224	18.19
100	1.33	171	2.55	225	103.45
101	.44	172	.60	226	10.91
102	.90	173	.74	227	33.15
103	.43	175	35.87		
Total					1,043.14

On the basis of settlement employed by defendant in payment, plaintiff has been underpaid by defendant, as [fol. 50] shown on defendant's exhibit E, the net sum of $41.91, distributed in items of Exhibit No. 8 to the petition as follows:

	Due plaintiff on defendant's basis
215	$8.44
216	6.55
225	34.19
Total	49.18
95—Due United States	7.27
Net underpayment	$41.91

There were other routes via land-aided roads which could have been used as a basis for calculation of net freight charges, with resulting calculations of net charges less than herein claimed by plaintiff and more than herein claimed by defendant. Full particulars with regard to such routes and resulting charges are not in evidence.

There is no satisfactory evidence of record with respect to item No. 188 in the amount of $16.33, and no further finding with respect thereto is made herein.

14. The shipments listed as items 12, 14, 15, 20, 21, 26, 29, 30, 34, 35, 36, 37, 39, 40, 41, 46, 54, 55, 56, 57, 58, 59, 64, 65, 66, 77, 78, 79, 80, 81, 82, 83, 100, 101, 102, 103, 104, 105, 113, 114, 115, 118, 123, 124, 125, 126, 127, 128, 133, 134, 135, 136, 137, 140, 144, 145, 146, 147, 149,

of the defendant for the difference of $1,251.73. It is so ordered.

MADDEN, *Judge;* WHITAKER, *Judge;* and WHALEY, *Chief Justice,* concur.

JONES, *Judge,* took no part in the decision of this case.

[fols. 61-62] V. JUDGMENT OF THE COURT

At a Court of Claims held in the City of Washington on the 4th day of October, A. D., 1943, judgment was ordered to be entered as follows:

Upon the special findings of fact, which are made a part of the judgment herein, the court concludes as a matter of law that plaintiff is entitled to recover $386.83.

The court further concludes as a matter of law that the defendant is entitled to recover on its counterclaim from the plaintiff the sum of $1,638.56.

It is therefore ordered and adjudged that the defendant recover of and from the plaintiff the sum of one thousand two hundred fifty-one dollars and seventy-three cents ($1,251.73).

[fols. 63-64] VI. PROCEEDINGS AFTER ENTRY OF JUDGMENT

On November 16, 1943, the plaintiff filed a request for record in re certiorari under Rule 99b, together with a copy of the petition and copies of other parts of the record as are material to errors assigned.

On November 22, 1943, the defendant filed copies of such other parts of the record as, in his judgment, are material to errors assigned.

[fols 65-66] VII. ORDER SETTLING RECORD

Order

Settling and Approving Transcript of Record on Petition for Certiorari

The within transcript prepared from the original record in this court in the above-styled case having been proposed in part by plaintiff and in part by defendant as that por-

150, 151, 152, 153, 159, 172, 173, 179, 182, 185, 190, 191, 195, 196, 197, 198, 204, 205, 206, 209, 212, moved from Sheffield, Alabama, to Corinth, Mississippi, over plaintiff's line, a distance of 54.3 miles, being a route not aided by land grants. The total claim on these items is $241.19. Plaintiff billed its charges against defendant at full commercial rates, and now claims such rates. The defendant in payment deducted from plaintiff's bills $241.19. In arriving at this deduction defendant used the following route for purpose of land-grant deduction: Sheffield to Parrish, Ala., via Northern Alabama Ry.; thence to Birmingham, Ala., via plaintiff's line; thence to Meridian, Miss., via Alabama Great Southern R. R.; thence via Mobile & Ohio R. R. to destination, a distance of 484.82 miles. The land-grant lines on the route used by defendant for equalization purposes were from Birmingham to the Alabama-Mississippi State Line and from Meridian to Corinth.

[fol. 51] Commercial shipments do not move from Sheffield to Corinth by way of the route used by defendant.

There are certain alternative land-grant routes from Sheffield to Corinth used neither by plaintiff nor by defendant in their calculations, which would result in higher net charges than paid by defendant and lower net charges than those contended for by plaintiff. These alternative routes are illustrated by the map in evidence as plaintiff's Exhibit No. 42, made a part hereof by reference, the lines depicted in red being the land-aided roads. The alternative routes are not used by commercial traffic.

15. The shipments covered by items Nos. 166, 167, 170, 171, 184, 199, and 200 of Exhibit No. 8 to the petition, moved from Corinth to Sheffield over plaintiff's line, 54.3 miles. The differences thereon, claimed herein, total $44.70. Plaintiff billed for the full commercial rate. Defendant deducted therefrom $44.70 in settlement, using a land-grant equalization route as in the case of shipments in the reverse direction, Sheffield to Corinth, *supra*, Finding No. 14, and the findings therein made apply in both directions.

16. The shipments listed as items 164, 168, 169, 217, 218, 219, 226 of Exhibit No. 8 to the petition, on which a total of $58.24 is claimed, moved for Sheffield to Decatur, Ala., entirely by way of the Southern Railway, a distance of 44.1 miles, non-land grant; and plaintiff billed without land-grant deduction, and now claims full commercial charges

tion of the record material to the errors assigned in the petition of plaintiff for a writ of certiorari, and such transcript having been considered and found to be an accurate statement of the portions of the original record material to the errors assigned, the same is, this November 24, 1943, hereby settled and approved.

By the Court:

Richard S. Whaley, Chief Justice.

[fols. 67-68] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 69] OTHER PARTS OF THE EVIDENCE REQUESTED BY PLAINTIFF TO BE INCLUDED IN THE TRANSCRIPT OF THE RECORD IN RE CERTIORARI

Washington, D. C. Tuesday, April 28, 1942.

* * * * * * *

1Q. What is your name, please?
A. L. V. Crane.
2Q. By whom are you employed, Mr. Crane?
A. Southern Railway.
3Q. How long have you been with the Southern Railway Company?
A. About thirty years.
4Q. In what department?
A. Freight traffic department.
5Q. What is your present title?
A. Freight traffic manager.

* * * * * * *

Mr. Boxley. Mr. Commissioner, the freight land-grant equalization agreement of November 29, 1933 was filed herein with a stipulation. I do not know whether a copy of the agreement is available, but I have another copy which I should like to refer the witness to.
[fol. 70] Mr. Mehlinger. That is all right.

By Mr. Boxley:

8Q. Mr. Crane, I hand you a photostatic copy of a letter dated November 29, and ask you to identify it.

A. (Examining the letter) The letter is entitled "Freight Land-Grant Equalization Agreement," and it was filed on behalf of the Southern Railway and Alabama Great Southern Railroad Company, the Cincinnati, New Orleans and Pacific (sic) Company——

9Q. Pardon me; you need not mention those.

A. Very well.

10Q. Mr. Crane, did you have anything to do with the making of that agreement?

A. I did.

* * * * * * *

13Q. Did you carry on the negotiations?

A. I did, and I actually prepared this agreement.

14Q. Mr. Crane, will you state, please, what the purpose of that agreement was?

A. The purpose of the agreement was to secure the handling of traffic.

By Commissioner Hobbs:

15Q. To do what?

A. To secure the handling of traffic which in the absence [fol. 71] of the agreement might otherwise move over competing railroads.

* * * * * * *

1Q. What is your full name, Mr. Harper?

A. W. N. Harper.

2Q. By whom are you employed?

A. Southern Railway Company.

3Q. At what place?

A. Charlotte, North Carolina.

4Q. How long have you been with the Southern Railway Company?

A. Thirty-seven years.

5Q. In what department?

A. In the transportation department.

6Q. What is your present title, Mr. Harper?

The Commissioner: Just a minute. I do not understand what he means by "transportation department."

By the Commissioner:

7Q. Won't you give us a little more detail?

A. The transportation department is that part of the operating department which has supervision of the movement of trains.

8Q. You are in the operating department?

A. Yes, sir.

[fol. 72] The Commissioner: All right.

By Mr Boxley:

9Q. Did you state what your present title is?

A. Assistant general superintendent of transportation.

* * * * * * *

14Q. It has further been testified that the blue line on this Exhibit 26 represents the routes used by the Government in computing the rate south of Cairo.

* * * * * * *

38Q. I do not recall whether I asked you whether you regard those routes shown in * * * blue as competitive on traffic moving from the Northwest and West into North and South Carolina. If I did not ask you, I ask you now. Do you regard those routes as competitive or not?

A. No, sir; I do not.

* * * * * * *

[fol. 73] 42Q. Now, Mr. Harper, do you regard the government route through Meridian, Birmingham, and Calera, and through Montgomery and Columbus, and the so-called alternate routes shown in yellow, as logical or illogical, natural or unnatural?

* * * * * * *

The Commissioner: I do not know what you mean by "logical." What is the other adjective you used?

Mr. Boxley: Natural or unnatural.

The Commissioner: Well, I confess the question conveys no particular meaning to me. I do not know what you mean by a natural route or an unnatural route.

Mr. Boxley: I mean from a transportation standpoint. I am putting the question to a transportation witness.

The Commission: (sic) If the question you are getting at is whether or not they are practical routes, he may answer that question.

Mr. Boxley: Well, I will state it that way.
The Commissioner: All right.

A. I would consider it a very unpractical route—in fact, if I may say so, it would be a preposterous route. No one would consider routing livestock via such a route and confining your cattle from two to three to four days longer and requiring two to three additional feedings.

Mr. Boxley: That is all.

[fol. 74] [Title omitted]

OTHER PARTS OF THE EVIDENCE REQUESTED BY DEFENDANT TO BE INCLUDED IN THE TRANSCRIPT OF THE RECORD IN RE CERTIORARI

* * * * * * *

3Q. What is your fullname, Mr. Byrd?
A. Ernest Nevitt Byrd.
4Q. By whom are you employed?
A. Southern Railway.

* * * * * * *

6Q. How long have you been employed by the Southern Railway?
A. 23 years.
7Q. During that time in what department have you been employed?
A. I have been in freight rates, under the auditor of freight accounts.
8Q. What is your present title?
A. Chief rate clerk, Southern Railway, Auditor of Freight Accounts.
[fol. 75] 9Q. Just explain briefly, Mr. Byrd, what your duties consist of.
A. My duties consist of the supervision of the rating and distribution of revenue of all received traffic consigned to consignees, reported by agents of the Southern Railway System; to interpret tariffs; issue instructions to my force, whose duty is to revise the rates and make distribution of the revenue.

* * * * * * *

165X Q. Mr. Byrd, I believe you said that you supervised the preparation of these bills and the computation of this statement that was introduced in exhibits 6 to 17 and 30 to 39, mainly mileage exhibits with reference to certain tariffs, and in support of those mileages you have stated various charges which you assert to be due.

Now, just how does a distance tariff figure in the determination of the commercial rate in these particular instances as far as those shipments are concerned? In other words, is the distance tariff necessary for determination of the commercial rate?

A. These particular rates you are speaking of?

* * * * * * *

167X Q. In the first cause of action?

A. No, not the distance.

168X Q. * * * Well, then, does the distance tariff establish any rates between Cairo and destination, we will say, in the first cause of action?

[fol. 76] A. It does not.

169X Q. Does the tariff that publishes the commercial rate from Cairo to destination, which is used as a proportional rate in the first cause of action in connection with alternate shipments, excepting those from East St. Louis, refer to the distance table?

A. It does not.

170X Q. Is it necessary for a commercial tariff to refer to a distance table if the distance table was to restrict the application of the rate?

A. It is. In some of your tariffs where you have a certain amount of circuity, have a maximum circuity, you must s-ay within the bounds of that circuity.

171X Q. Was there any such circuity in this tariff in this instance?

A. In the first cause of action there was not.

* * * * * * *

172X Q. So it is not necessary to refer to the distance tables at all in an attempt to arrive at the correct commercial rate?

A. You are speaking strictly of the commercial rate?

173X Q. Of the first cause of action.

A. Of the commercial rate?

174X Q. Of the commercial rate.
A. No, there is not.

* * * * * * *

[fols. 77-78] 1Q. What is your name?
A. Lester L. Whitehead.
2Q. By whom are you employed?
A. The United States Government, General Accounting Office, Claims Division.
3Q. How long have you been employed there?
A. Since October 15, 1934, I believe.
4Q. For whom did you work before that?
A. Mobile & Ohio Railway.
5Q. How long were you working for them?
A. Approximately fourteen years.
6Q. What was the line of your duty while you were working with the railroad company?
A. Handling freight rates, divisions, apportioning revenues between the various carriers.
7Q. What are your duties with the Government?
A. Present duties?
8Q. Present duties.
A. I am claims reviewer, review examiner. It still pertains to preparing the briefs, the rough drafts, for decisions issued in connection with transportation claims against the Government.

* * * * * * *

11Q. Of course, you are familiar with land grant deductions?
A. I am.
[fol. 79] 12Q. From what kind of rates are land grant deductions made?
A. Commercial rates.
13Q. How are commercial rates made?
A. From tariffs published, lawfully on file with the Interstate Commerce Commission and the various state commissions.
14Q. Over what routes do commercial rates apply?
A. By any route laid down in the tariff.
15Q. Have you ever found rates in a tariff to be restricted to apply only over certain routes to the exclusion of other routes?
A. I did.

* * * * * * *

17Q. Did you find any limitations in the rate tariffs now in evidence which precluded application of the commercial rates over the routes selected by the Government for the purpose of ascertaining those net charges?

. . . . . .

A. No.

18Q. Did you find any provisions in the rate tariffs which restricted application of the commercial rates applied on shipments involved in these proceedings to routes which included no land grant?

. . . . . .

A. No.

. . . . . .

[fol. 80] 21Q. Are you acquainted with the routing provisions of the tariff from which the livestock rates were taken which were applied in the shipments in the first cause of action?

A. I am.

22Q. Would you say that under the routing provisions of that tariff all routes are available between Cairo and Asheville?

A. All routes comprised of carriers parties to this tariff.

23Q. Would those routes include land-aided routes?

A. They would include some land-aided routes, sure.

24Q. More than one?

A. Many.

25Q. How would you select the land grant route, then?

A. Well, the only way I would know to select the land grant route would be to use the route producing the lowest net rate.

26Q. What is the basis for that statement?

A. The carriers' equalization agreement; the carriers' land grant equalization agreement.

27Q. Are you acquainted with mileage tariffs?

A. I am.

28Q. In your experience have you ever had occasion to use a mileage or distance tariff?

A. I have.

[fol. 81] 29Q. Have you ever found those mileage or distance tariffs in themselves to restrict a rate or to prescribe a route for a rate that is published in another tariff?

A. No, I have not.

30Q. Supposing it was intended that a mileage or a distance tariff was to restrict the application of a rate or establish a route for a rate published in another tariff, how would this be accomplished, if it could be?

A. By specific reference being made to the mileage tariff or table by the tariff publishing the through rate.

31Q. Did you find any such reference to distance or mileage tariffs in the tariff which published the rates applied on the livestock involved in these proceedings?

A. I did not.

* * * * * * *

[fol. 82] [Title omitted]

AGREED STATEMENT OF FACTS—Filed March 30, 1942

I

Plaintiff is a corporation duly organized and existing under the laws of Virginia and as such corporation now is and was during all of the times hereinafter mentioned engaged as a common carrier in the transportation of passengers and freight in interstate and intrastate commerce.

All of the shipments listed in Exhibits Nos. 4, 8, and 9 to plaintiff's petition were delivered within six years prior to the date of the filing of the petition herein.

[fol. 83] III

Plaintiff was the last or delivering carrier of each of the shipments hereinafter mentioned and as such was entitled to collect the freight charges thereon; plaintiff has made no assignment or transfer of the claims herein averred, or any part thereof or any interest therein; plaintiff has at all times borne true allegiance to the Government of the United States and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against said Government.

IV

On November 29, 1933, plaintiff and defendant entered into an agreement entitled "Freight Land-Grant Equalization Agreement," a copy of which is marked "Plaintiff's Exhibit No. I" and attached hereto and made a part hereof.

Under said agreement plaintiff agreed, subject to certain conditions and exceptions therein stated, which have been observed and complied with except as hereinafter shown in connection with the third cause of action:

> to accept for the transportation of property shipped for account of the Government of the United States and for which the Government of the United States is lawfully entitled to reduced rates over land-grant roads, the lowest net rates lawfully available, as derived through deduction account of land-grant distance from [fol. 84] the lawful rates filed with the Interstate Commerce Commission applying from point of origin to destination at time of movement.

Said agreement, which did not embody any express mileage limitations, was in full force and effect on the dates of transportation of all shipments involved in the three causes of action embraced in this proceeding.

First Cause of Action

V

Between July 13, 1934, and September 15, 1934, the Federal Surplus Relief Corporation, as consignor and duly authorized agent of the United States, shipped over plaintiff's lines and its connections the 147 shipments of livestock listed in Exhibit No. 4 to the petition herein, property of the United States, from points in Minnesota, Kansas, Illinois, Iowa, Missouri, Wisconsin, and Nebraska to points in North Carolina, South Carolina, Georgia, Tennessee, and Virginia. Plaintiff transported and delivered each of said shipments in accordance with the uniform livestock contracts. Upon delivery of the shipments at destinations, the said uniform livestock contracts were surrendered to the carrier together with stickers attached thereto reading, in part, as follows:

> Property of the Federal Government
>
> Carriers' charges to be collected from the Federal Surplus Relief Corporation, Washington, D. C., in the [fol. 85] same manner as if under a Government Bill of Lading.

Instructions for billing:

1. Consignee should pay no charges on this shipment.
2. Charges to be billed to the Dept. or Estab. and Bu. of Service named above on authorized Government voucher form, attaching this bill of lading as supporting paper.

VI

For said transportation services plaintiff submitted its bills on which it claimed freight charges totaling $88,481.89, of which amount defendant paid plaintiff $78,584.99, leaving a balance of $9,896.90 claimed by plaintiff to be due and unpaid, as set forth in said Exhibit No. 4. Plaintiff, however, has abandoned the amounts claimed on items Nos. 8, 25, 45, 65, 66, 75, 76, 77, 97, 101, 102, 103, 104, 109, 114, and 144, totaling $366.58, and claims a balance of $9,530.32 to be due on account of said shipments.

VII

The through commercial charges, from points of origin to destinations, on the shipments listed in Exhibit 4 to the petition herein, except those shown to have originated at East Saint Louis (National Stock Yards), Illinois, are computed, under the applicable tariffs, on the basis of a combination of rates comprising as factors in each instance the rate from origin to Cairo, Illinois, and the rate from [fol. 86] Cairo to destination. The controversy as to the net charges derived from said basis relates solely to the extent, if any, that land-grant deductions south of Cairo, Illinois, are authorized.

Those shipments shown in said Exhibit 4 as having originated at East Saint Louis (National Stock Yards), Illinois, moved to the respective destinations under through rates published as such. There is no dispute as to the proportion of the respective through rates and the land-grant deductions therefrom used by the defendant north of Cairo, Illinois, in the computation of the amounts paid plaintiff.

The rate factors from Cairo, Illinois, and the through rates from East Saint Louis (National Stock Yards), Illinois, via Cairo, Illinois, to the respective destinations shown in said Exhibit 4 were published in Agent F. L.

Speiden's tariff No. 148-B, I. C. C. 1335, hereinafter referred to as Speiden's Tariff.

Said tariff did not impose any distance limitations upon the application of the commercial rates published therein, which rates were applicable also on like commercial shipments between Cairo and East Saint Louis (National Stock Yards), Illinois, as points of origin, and the respective destinations listed in Exhibit 4 to the petition, via the land-aided routes used by defendant in computing the charges payable under the equalization agreement.

Speiden's Tariff and supplements thereto, marked de-
[fol. 87] fendant's Exhibit A, are attached hereto and made a part hereof by reference.

Interstate Commerce Commission Circular No. 20, and Supplement No. 5 thereto, marked defendant's Exhibits B and C, said circular being referred to specifically on the title page of certain supplements to Speiden's Tariff, are also attached hereto and made a part hereof by reference.

VIII

Plaintiff and other carriers composing the land-aided routes south of Cairo, Illinois, via which the respective payments made by defendant to plaintiff for the shipments described in said Exhibit 4 were computed, were all parties to Speiden's Tariff.

IX

Speiden's Tariff specified on page 81 thereof that unless otherwise specifically provided in that Tariff and supplements thereto, the rates published therein on livestock were applicable via all routes of carriers parties to that Tariff, except via routes embracing carriers to the extent shown in item 300. The routing restrictions shown in said item are not pertinent to the first cause of action. On page 80 of the Tariff, in item 158, under the caption "Non-Application of Rates," the rates in said Tariff are so qualified that application thereof in connection with the Southern Railway Company from points in Illinois to points in North
[fol. 88] Carolina and Virginia could not be had through any point in the States of Mississippi, Alabama, or Georgia, except via points in these states on the Memphis Division of the Southern Railway between Memphis and Chattanooga, Tennessee, which Division embraces no land-grant

mileage. The Tariff contains no restrictions precluding the application of rates published therein from points in Illinois to points in South Carolina, Georgia, and Tennessee, in connection with the Southern Railway Company through points in Mississippi, Alabama, or Georgia.

Supplement No. 5 to Speiden's Tariff, in item No. 158-A, canceled item 158 of the original tariff and authorized the application of rates as provided in that tariff as amended. The prohibition published in item 158 of the original tariff was not in effect at the time the shipments described in the first cause of action moved, and the tariff as amended and in effect at the time of said shipments contained no similar routing instructions.

X

Supplement No. 58 to Speiden's Tariff, effective December 4, 1933, and in effect during the time the shipments involved in this cause of action moved, contained the following routing instructions:

> The rates named herein apply via all routes made by the use of the lines of any of the carriers parties to this [fol. 89] tariff, except as otherwise specifically provided in this tariff, as amended, or as specifically provided in individual rate items or in connection with individual rates.

No exceptions are published in individual rate items or in connection with individual rates, or elsewhere in Speiden's Tariff, as amended, insofar as the shipments herein involved are concerned, which precluded the application of the routing provision of Supplement No. 58.

The several amounts computed by the defendant as properly payable to the plaintiff for the shipments described in said Exhibit 4 to the petition, were determined on the basis of net rates available as derived through deductions account of land-grant distance from the commercial rates lawfully on file with the Interstate Commerce Commission, said commercial rates being applicable, under the pertinent routing provisions of the tariff, on like commercial shipments from Cairo or East Saint Louis, as the case may be, to the respective destinations listed in Exhibit 4, via the routes used by defendant to ascertain the amounts of the several land-grant deductions for the Government shipments here in issue.

Said commercial rates from East Saint Louis (National Stock Yards) or Cairo, Illinois, as the case may be, to the respective destinations in Exhibit 4, published in Speiden's [fol. 90] Tariff, in addition to applying over the routes used by the plaintiff to ascertain the charges claimed and by the defendant to determine the amounts claimed by it to be payable, applied also on like commercial shipments which might have been forwarded via other routes which included Government land-aided mileage, via which the deductions account of land-aided mileage included in such other routes would result in charges which are higher than the amounts paid by defendant, but lower than the amounts claimed by plaintiff.

The sole issue presented in the first cause of action involves the determination of an available land-aided route south of Cairo, Ill., if any, in accordance with the terms of the plaintiff's freight land-grant equalization agreement, for the purpose of establishing in pertinent part charges for transporting the shipments, listed in said Exhibit 4 to the petition, over the actual routes of movement.

XI

The charges as claimed in the petition are computed on the basis of the full commercial charges from Cairo (or the full proportion of the commercial charges south of Cairo on the shipments from East Saint Louis, Illinois) to the respective destinations named in Exhibit 4 without any deduction for land grant, though in its original bills plaintiff in certain instances, as indicated by reference "A" in Exhibit D, claimed charges on the basis of a reduction in the [fol. 91] commercial rates because of land grant.

XII

Attached hereto and made a part hereof by reference, is a tabulation marked "Defendant's Exhibit D," with explanatory notes showing the amounts that should have been paid if the route used by defendant in computing the rate be correct, the amounts paid, amounts overpaid and underpaid in certain instances, item numbers, origin and destination of the shipments.

Second Cause of Action

XIII

Between July 24, 1934, and February 17, 1938, on behalf of the Tennessee Valley Authority, a duly authorized agency of the United States, there were shipped over plaintiff's lines and its connections 227 shipments of varjous kinds of Government property from and to the points listed in Exhibit 8 to the plaintiff's petition. All of said shipments were transported on Government bills of lading and were delivered by plaintiff in accordance therewith.

XIV

For said transportation service plaintiff submitted its bills on which it claimed freight charges totaling $8,984.69, of which amount defendant paid plaintiff $7,467.48, leaving [rol. 92] a balance of $1,517.21 unpaid, as set forth in Exhibit 8 to the petition.

Plaintiff, however, has abandoned amounts claimed on shipments described in items numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 16, 17, 18, 19, 22, 23, 24, 25, 27, 28, 31, 32, 33, 38, 42, 43, 44, 45, 47, 48, 49, 50, 51, 52, 53, 60, 61, 62, 63, 67, 68, 69, 70, 71, 72, 73, 74, 76, 84, 85, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 106, 107, 108, 109, 110, 111, 112, 116, 117, 119, 120, 121, 122, 129, 130, 131, 132, 138, 139, 141, 142, 143, 148, 154, 155, 156, 157, 158, 160, 161, 165, 174, 176, 180, 181, 183, 186, 189, 192, 193, 194, 207, 208, 210, 211, totalling $474.07, and now claims a balance of $1,043.17 to be due on the remaining shipments embraced in plaintiff's second cause of action instead of $1,517.21 as stated in Exhibit 8 to the petition.

XV

The commercial rates applicable on shipments described in items Nos. 12, 14, 15, 20, 21, 26, 29, 30, 34, 35, 36, 37, 39, 40, 41, 46, 54, 55, 56, 57, 58, 59, 64, 65, 66, 77, 78, 79, 80, 81, 82, 83, 100, 101, 102, 103, 104, 105, 113, 114, 115, 118, 123, 124, 125, 126, 127, 128, 133, 134, 135, 136, 137, 140, 144, 145, 146, 147, 149, 150, 151, 152, 153, 159, 172, 173, 179, 182, 190, 191, 194, 195, 196, 197, 198, 204, 205, 206, 209, 212, listed in Exhibit 8 to the petition, were published in Speiden's Tariff, I. C. C. No. A-703, as amended, formerly issued by J. H. Glenn, which tariff was lawfully on file with the Interstate

[fol. 93] Commerce Commission and in effect at the time the above shipments moved.

Supplement No. 119 to Speiden's Tariff, I. C. C. No. A-703, as amended, which was in effect at the time the shipments listed in paragraph XV moved, stated on page 117 thereof, under the caption of "Routing Instructions," in section 7, that—

> The rates herein apply via all routes made by the use of the lines of any of the carriers parties to this tariff, except as otherwise specifically provided in tariff, as amended, or as specifically provided in individual rate items or in connection with individual rates.

The carriers composing the routes over which the payments were computed by the defendant for the respective shipments described in items listed above were parties to said tariff as amended.

There were no prohibitions in individual rate items, or shown in connection with individual rates, or appearing elsewhere in said tariff, as amended, affecting the routing provision of Supplement No. 119 insofar as commercial shipments or the shipments described in the items referred to in this paragraph are concerned.

XVI

The commercial rates applicable on the shipments described in items Nos. 164, 168, and 169 of Exhibit 8 to the [fol. 94] petition were published in Speiden's Tariff, I. C. C. No. A-703, as amended, which tariff was lawfully on file with the Interstate Commerce Commission and the Alabama State Commission and in effect at the time the above shipments moved. All of said shipments moved from Sheffield, Alabama, to Decatur, both stations being junction points within the meaning of Alabama Routing Guide No. 222.

Item No. 692 of Supplement No. 146 to Speiden's Tariff, I. C. C. No. A-703, as amended, stated under the designation "Application of Rates, Routing Rules and Regulations, Between Points in Alabama (carload, less-than-carload, or any quantity)," that—

> Where there are two or more routes between any two stations over which carload freight can be moved without transfer of lading the specific carload, less-than-

carload, or any quantity rate, as the case may be published in this tariff, or as may be amended, between such points, or, in the absence of a specific rate, the lowest mileage scale rate, carload, less-than-carload, or any quantity, as the case may be, via any one of such routes will apply via all such routes, except that where specific routing is provided, in Agent Roy Pope Freight Tariff No. 222 (Alabama Routing Guide), I. C. C. 1496 (C. R. Young Series), supplements thereto or successive issues thereof, or elsewhere in this tariff, or as same may be amended, such rate will apply only via the route or routes so provided.

[fol. 95] There were no specific routes shown in Agent Speiden's Tariff, I. C. C. No. A-703, or in Alabama Routing Guide No. 222 for Alabama intrastate traffic between Sheffield, Alabama, and Decatur, Alabama. Payments made by the General Accounting Office for these shipments were computed over a land-aided route composed of the Northern Alabama Railway between Sheffield, Alabama, and Parrish, Alabama; the Southern Railway between Parrish, Alabama, and Birmingham, Alabama, and the Louisville and Nashville Railroad from Birmingham to Decatur, Alabama, over which route carload freight could have been moved without transfer of lading. Said carriers were parties to Agent Speiden's Tariff, I. C. C. No. A-703.

XVII

The shipment covered by item No. 188 of Exhibit 8 to the petition was ratable in accordance with the provisions of Supplement No. 156 to Agent F. L. Speiden's Tariff, I. C. C. No. 1281, which provided under the caption of "General Routing Instructions" that—

> The rates named herein apply via all routes made by the use of the lines of any of the carriers parties to this tariff, except as otherwise specifically provided in this tariff, as amended, or as specifically provided in individual rate items or in connection with individual rates.

[fol. 96] The carriers composing the land-aided route over which the payment for this shipment was computed were parties to Agent F. L. Speiden's Tariff, I. C. C. No. 1281, as amended, by Supplement No. 156 thereto. There was no

qualification in said tariff, as amended, which precluded the application of the General Routing Instructions in connection with the rate applied on the shipment.

XVIII

The commercial rates applicable on the shipments described in items Nos. 86, 87, and 88 were published in Agent B. T. Jones' Tariff, I. C. C. No. 2131, as amended by Supplement No. 82, which tariff was lawfully on file with the Interstate Commerce Commission and in effect when the above shipments moved.

Supplement No. 82 to the said Jones' Tariff states on the title page thereof, that—

> This tariff, as amended, contains rates that are higher for shorter than longer distances over the same route. Such departure from the terms of the amended Fourth Section of the Interstate Commerce Act are permitted by authority of Interstate Commerce Commission Fourth Section Orders Nos. 7026 of November 3, 1917, 7542 of December 2, 1919, as amended May 8, 1923, and November 2, 1925, 8574 of January 29, 1923, 8206 of June 2, 1922, 8680 of March 17, 1923, 8733 of May 25, [fol. 97] 1923, 9123 of April 21, 1925, 9585 of July 27, 1927, as amended August 13, 1927, 9578 of October 6, 1927, 9628 of September 16, 1927, and as indicated in individual items.

There is no provision of this tariff which indicates that the commercial rates from which were computed the net land-grant rates which were applied on these shipments did not apply under the authority of the Fourth Section Orders referred to on the title page of Supplement No. 82 to the tariff, via the route selected by defendant for land-grant purposes.

XIX

The commercial rates applicable on the shipments described in items Nos. 166, 167, 170, 171, 175, 177, 178, 184, 187, 199, 200, 201, 202, 203, 213, and 214 were published in Speiden's Tariff, I. C. C. No. 1829, which tariff was lawfully on file with the Interstate Commerce Commission and was in effect when the above shipments moved.

Speiden's Tariff, I. C. C. No. 1829, provided under the heading of "Routing Instructions," that—

> The rates named herein apply via all routes made by the use of the lines of any of the carriers parties to this tariff, except as otherwise specifically provided in individual rate items or in connection with individual rates.

[fol. 98] There is no limitation in this tariff which precludes the application of the commercial rates over the route selected by defendant for these shipments for land-grant purposes.

XX

The commercial rates applicable on the shipments described in items 75, 162, 163, and 185 of Exhibit 8 to the petition herein, were published in Speiden's Tariff, I. C. C. No. 1846, which tariff was lawfully on file with the Interstate Commerce Commission and in effect when the above shipments moved.

Item 2000 of Speiden's Tariff, I. C. C. 1846, provided under the caption of "Routing Instructions," that—

> Rates named herein apply via all routes made by the use of the lines of any of the carriers parties to this tariff, except as otherwise specifically provided in tariffs, as amended, or as specifically provided in individual rate items or in connection with individual rates.

There were no exceptions in the tariff which precluded application of the commercial rates over the routes selected by defendant for these shipments for land-grant purposes.

XXI

The commercial rates applicable on the shipments de-[fol. 99] scribed in items Nos. 215 and 216 of Exhibit 8 to the petition herein, were published in Pope's Tariff, I. C. C. No. 110, which tariff was lawfuly on file with the Interstate Commerce Commission and the Alabama State Commission and in effect wher the above shipments moved. Each of said shipments moved from Decatur, Alabama, to Margerum, Alabama, the former being a junction point and the

latter a local point within the definitions of those terms in Alabama Routing Guide No. 222.

Item No. 615 to Pope's Tariff, Section No. 110, provides in part as follows:

> Rates to Apply via Routes Not Authorized in this Tariff or in Alabama Routing Guide.
>
> (The provisions of this item are applicable only to Alabama Intrastate traffic. Interstate routes are in nowise affected by the provisions of this item; rates in this tariff apply via interstate routes made by the use of the lines of any of the carriers parties to this tariff, except as otherwise specifically provided on pages 240 through 249 of this tariff, in individual rate items, or in connection with individual rates.)
>
> When specific routing is provided in this tariff or in Roy Pope Tariff 222 (Alabama Routing Guide), I. C. C. 1496 (C. R. Young Series), and shipments move at shippers' direction via a route not authorized in this tariff or in the Routing Guide, the rate to be assessed [fol. 100] will be 110 percent of the rate applicable via the authorized route or routes between such stations (fractions to be disposed of in accordance with Rule 36 of Sou. Class'n) or the rate made by use of the appropriate mileage scale for the distance the shipment actually moves, whichever is higher, except that when such shipment moves between a local station and a common point * * * the appropriate mileage scale for the distance the shipment actually moves shall not be exceeded.

The shipments listed in this paragraph were rated for the purpose of land-grant deductions over a route other than that authorized by Alabama Routing Guide No. 222, which caused the normal rate to be increased 10 percent. The increase has been included in the charges as computed by defendant to be payable under the equalization agreement and as shown in defendant's Exhibit E.

XXII

The commercial rates applicable on the shipments described in items Nos. 217, 218, 219, 226, and 227 of Exhibit 8 to the petition herein, published in Pope's Tariff,

I. C. C. No. 110, which tariff was lawfully on file with the Interstate Commerce Commission and the Alabama State Commission and in effect when the above shipments moved. The shipments moved between Sheffield, Alabama, and Decatur, Alabama, both places being junction points within the definition of that term published in Alabama Routing Guide No. 222.

[fol. 101] Item No. 612 of Pope's Tariff, I. C. C. 110, provides that—

> Routing Rules and Regulations, Between Points in Alabama (Carload, Less-than-Carload, or Any Quantity)
>
> (The provisions of this item are applicable only to Alabama intrastate traffic. Interstate routes are in nowise affected by the provisions of this item; rates in this tariff apply via interstate routes made by the use of the lines of any of the carriers parties to this tariff, except as otherwise specifically provided on Pages 240 through 241 of this tariff, in individual rate items, or in connection with individual rates.)
>
> Where there are two or more routes between any two stations over which carload freight can be moved without transfer of lading, the specific carload, less-than-carload, or any quantity rate, as the case may be, published in this tariff between such points, or, in the absence of a specific rate, the lowest mileage-scale rate, carload, less-than-carload, or any quantity, as the case may be, via any one of such routes will apply via all such routes, except that where specific routing is provided in Roy Pope Tariff 222 (Alabama Routing Guide), I. C. C. 1496 (C. R. Young Series), or elsewhere in this tariff, such rate will apply only via the route or routes so provided.

No specific routing is published in Alabama Routing Guide No. 222, nor in Pope's Tariff, I. C. C. No. 110, [fol. 102] between Sheffield, Alabama, and Decatur, Alabama. The route selected by defendant for land-grant purposes for the shipments listed in this paragraph did not require the lading of a carload shipment to be transferred. The carriers composing the land-aided route over which were computed the payments made by defendant were parties to Pope's Tariff, I. C. C. No. 110.

XXIII

The commercial rates applicable on the shipments described in items Nos. 220, 221, 222, 223, 224, of Exhibit 8 to the petition herein, were published in Pope's Tariff, I. C. C. No. 197, which tariff was lawfully on file with the Interstate Commerce Commission and the Alabama State Commission and in effect when the above shipments moved. The shipments moved from Decatur, Alabama, to Sheffield, Alabama, both places being junction points within the definition of that term as published in Alabama Routing Guide No. 222.

Item No. 11015 of Pope's Tariff, aforesaid, provides, that—

Routing Between Points in Alabama (Carload or Less-than-Carload)

The provisions of this item are applicable only on Alabama Intrastate Traffic and then only between sta- [fol. 103] tions served by the following lines. Interstate routes are in nowise affected by the provisions of this item, rates in this tariff, apply via interstate routes made by the use of the lines of any of the carriers parties to this tariff, except as otherwise specifically provided on Pages 32 through 85 of tariff, or in individual rate items, or in connection with individual rates.

AGS	CofC	NC&StL	SAL
AB&C	IC	NA	Sou
BS • • •	L&N	SLSF	WofA
	M&O		

Where there are two or more routes between any two stations over which carload freight can be moved without transfer of lading, the specific carload or less-than-carload rate as the case may be, published in this tariff, or as same may be amended, between such points or in the absence of a specific rate, the lowest mileage-scale rate, whether carload or less than carload, as the case may be, via any one of such routes will apply via all such routes, except that where routing is provided in Roy Pope Tariff 222 (Alabama Routing Guide), I. C. C. 1496, such rate will apply via the route or routes so provided.

No specific routing is published between Decatur and Sheffield, in Alabama Routing Guide 222, nor in Tariff No. 197. The routes selected by defendant for land-grant purposes for the shipments listed in this paragraph did not require the lading of a carload shipment to be trans- [fol. 104] ferred. The carriers composing the land-aided route over which were computed the payments made by defendant were parties to Tariff, I. C. C. No. 197.

XXIV

The shipment described in item No. 225 consisted of steel piling and a power shovel weighing 131,000 pounds and 102,400 pounds, respectively, which moved from Margerum, Alabama, to Decatur, Alabama. Margerum is a local point and Decatur, a junction point, within the definition of those terms as published in Alabama Routing Guide No. 222.

The rate which was applicable on the steel piling was published in Agent Roy Pope's Tariff, I. C. C. No. 197, which provided in item No. 11018 thereof that—

> Rates to Apply via Routes Not Authorized Herein or in Roy Pope Tariff 222 (Alabama Routing Guide), I. C. C. 1496 (C. R. Young Series)
>
> The provisions of this item are applicable only on Alabama Intrastate Traffic and then only between stations served by the following lines. Interstate routes are in no wise affected by the provisions of this item; rates in this tariff apply via interstate routes made by the use of the lines of any of the carriers parties to this tariff, except as otherwise specifically provided on Pages 32 through 85 of tariff, or in individual rate [fol. 105] items, or in connection with individual rates.

AGS	CofGa	NC&STL	
AB&C	IC	NA	SAL
BS	L&N	SLSF	Sou
		M&O	WofA

When routing is provided herein, or in Roy Pope Freight Tariff 222 (Alabama Routing Guide), I. C. C. 1496 (C. R. Young Series) and shipments move at shipper's direction via a route not authorized herein, or in the Routing Guide, the rate to be assessed will be 110 percent of the rate applicable via the author-

ized route or routes between such stations (fractions to be disposed of in accordance with Rule 36 of Sou. Class'n), or the rate made by use of the appropriate mileage scale for the distance the shipment actually moves, whichever is higher, except that when such shipment moves between a local station and a common point the appropriate mileage scale for the distance the shipment actually moves shall not be exceeded • • •.

The rate which was applicable on power shovels was published in Agent Roy Pope's Tariff, I. C. C. No. 110, which provided in item No. 615 thereof, in pertinent part, that—

Rates to Apply via Routes Not Authorized in This Tariff or in Alabama Routing Guide

(The provisions of this item are applicable only to Alabama intrastate traffic. Interstate routes are in [fol. 106] nowise affected by the provisions of this item; rates in this tariff apply via interstate routes made by the use of the lines of any of the carriers parties to this tariff, except as otherwise specifically provided on Pages 240 through 249 of this tariff, in individual rate items, or in connection with individual rates.)

When specific routing is provided in this tariff or in Roy Pope's Tariff 222 (Alabama Routing Guide), I. C. C. 1496 (C. R. Young Series), and shipments move at shippers' direction via a route not authorized in this tariff or in the Routing Guide, the rate to be assessed will be 110 per cent of the rate applicable via the authorized route or routes between such stations (fractions to be disposed of in accordance with Rule 36 of Sou Class'n) or the rate made by use of the appropriate mileage scale for the distance the shipment actually moves, whichever is higher, except that when such shipment moves between a local station and a common point • • • the appropriate mileage scale for the distance the shipment actually moves shall not be exceeded.

The shipment herein involved was rated by defendant for the purpose of land-grant deductions over a route other than that authorized in Alabama Routing Guide No. 222.

Therefore, the normal commercial rates published in these tariffs are each subject to an increase of 10 percent when applied over the land-aided route selected by defendant. The increase has been included in the charges as computed [fol. 107] by defendant to be payable under the equalization agreement and as shown in Defendant's Exhibit E.

XXV

The rates published in the tariffs specifically mentioned in the foregoing paragraphs (XVI, XVII, XVIII, XIX, XX, XXI, XXII, XXIII, XXIV, XXV and XXVI) of this cause of action were applicable on commercial shipments, similar to the Government shipments described in Exhibit No. 8 to the petition herein, which might have been forwarded via routes used by the defendant as bases for computing the several amounts payable to plaintiff for the shipments described in said Exhibit No. 8.

The several amounts computed by the defendant as properly payable to the plaintiff for the shipments described in said Exhibit No. 8 were determined on the basis of net rates available as derived through deductions account of land-grant distance from commercial rates lawfully on file with the Interstate Commerce Commission applying from the respective points of origin to the respective destinations listed in said Exhibit No. 8 at the time of movement of said shipments.

The applications of the commercial rates published in the tariffs specifically mentioned in the foregoing paragraphs, were not subject to any mileage limitations insofar [fol. 108] as the shipments involved in the second clause of action were concerned. Said commercial rates, in addition to applying over the routes used by the plaintiff as a basis for charges claimed and by defendant as a basis for determining the several amounts claimed to be payable, applied also from the respective points of origin to the respective destinations, listed in Exhibit 8 to the petition, via other routes via which deductions for land-grant mileage occurring in such other routes would result in charges lower than those claimed by plaintiff but higher than the amounts paid by defendant.

There is no controversy respecting the amount of the commercial rates used by the plaintiff and the defendant, nor is there any dispute as to the fact that the net amounts

indicated by the defendant as properly payable have been computed correctly over the land-aided routes used by the defendant as a basis for such payments. The sole issue is the selection of an available land-aided route, if any, in accordance with the terms of the plaintiff's Freight Land-Grant Equalization Agreement, for the purpose of establishing charges for transporting the shipments, listed in said Exhibit 8, over the actual routes of movement.

Photostatic copies of the pertinent provisions of the tariffs specifically mentioned in the foregoing paragraphs of this cause of action, marked Defendant's Exhibit F, are [fol. 109] attached hereto and made a part hereof by reference.

XXVI

Based upon defendant's disbursing and accounting officers' interpretation of the routing provisions of the several tariffs cited herein and the equalization agreement, a net amount of $41.91 is due plaintiff for the shipments covered by the second cause of action.

A tabulation showing the amount due defendant on shipments described in item No. 95, and the amounts due plaintiff on shipments described in items Nos. 215, 216, and 225 of Exhibit 8 to the petition, marked Exhibit E, is attached hereto and made a part hereof by reference.

Third Cause of Action

XXVII

On November 29, 1933, plaintiff and defendant entered into an agreement entitled "Freight Land-Grant Equalization Agreement," a copy of which, marked Plaintiff's Exhibit No. 1, is attached hereto and made a part hereof. Under said agreement plaintiff agreed to accept, and defendant agreed to pay, subject to the condition and exception hereinafter mentioned, for the transportation of property of the United States for which the United States is [fol. 110] lawfully entitled to reduced rates over land-grant roads, the lowest net rates lawfully available as derived through deductions account of land-grant distance from the lawful rates filed with the Interstate Commerce Commission, applying from origin to destination at the time of movement. Said agreement was in full force and effect at all times hereinafter mentioned.

The condition and exception to said agreement above mentioned read as follows:

2. Conditions.

(a) On traffic destined to and/or received from points on lines of other carriers this agreement will only apply in connection with such carriers as have an agreement of the form stated in paragraph 1 above on file with the Quartermaster General, War Department, Washington, D. C., except as otherwise provided under the heading of Exceptions in paragraph 3 below.

3. Exceptions.

* * * * * * *

(b) On traffic moving from or to points in Central and Illinois Freight Association territories the provisions of Conditions (a) * * * in paragraph 2 above are hereby waived, provided the traffic moves in connection with these carriers via Cincinnati, Ohio, Louisville, Ky., East St. Louis, Ill., or other junction points on St. Louis Division of Southern Railway Company.

[fol. 111] XXVIII

Between December 29, 1934, and June 12, 1936, duly authorized representatives of defendant shipped over plaintiff's lines of railway and those of its connections 35 shipments of various kinds of Government property from and to points listed in Exhibit 9 to plaintiff's petition. All of said shipments were transported on Government bills of lading and were delivered by plaintiff in accordance therewith.

For said transportation services plaintiff submitted its bills on which it claimed freight charges totaling $2,524.00, of which amount defendant paid plaintiff $2,110.83, leaving a balance of $413.17 unpaid, as set forth in Exhibit 9 to the petition. Plaintiff abandoned the balances claimed on all of said shipments except the balances totaling $324.77 claimed on items Nos. 5, 21, 22, and 24 in said Exhibit 9.

The shipments described in items Nos. 5 and 24 of Exhibit 9 to the petition herein originated in Central Freight Association Territory and moved via Norfolk, Virginia, in connection with the Pennsylvania Railroad Company, which did not have on file with the Quartermaster General, United

States Army, a freight land-grant equalization agreement for its lines east of Pittsburgh, Oil City, and Erie, Pennsylvania. The commercial rates applicable on said shipments were published in Pope's Tariff, I. C. C. No. 2849, which [fol. 112] tariff was lawfully on file with the Interstate Commerce Commission and in effect when the above shipments moved.

The commercial rates applicable on the shipments described in items 21 and 22 of said Exhibit 9 were published in Pope's Tariff, I. C. C. No. 1449, which tariff was lawfully on file with the Interstate Commerce Commission and in effect when the above shipments moved. Under the provisions of said tariff the commercial rates published therein were not applicable via the land-aided routes over which the charges for said shipments were computed by defendant.

XXIX

Defendant concedes that plaintiff is entitled to recover the principal amount of $324.77 claimed on its third cause of action. If the Court should find that in the first and second causes of action defendant has not computed the charges in accordance with the tariffs and land-grant equalization agreement hereinbefore cited, and that said tariffs and agreement are silent on the matter of distance limitations, then there is no fixed basis upon which plaintiff and defendant can agree for the computation of net charges in the absence of a determination by the Court of such mileage limitations as it may find to be proper within the contemplation of said tariffs and land-grant equalization agreement; [fol. 113] but when said limitations, if any, are determined by the Court, charges in accordance therewith will be computed by the parties, and if in agreement, will be for stipulation as to the amount due the plaintiff or the defendant, as the case may be.

Francis M. Shea, Assistant Attorney General. Louis R. Mehlinger, Attorney for Defendant. Seddon G. Boxley, Attorney for Plaintiff.

(Here follows 1 photolithograph, side folio 114)

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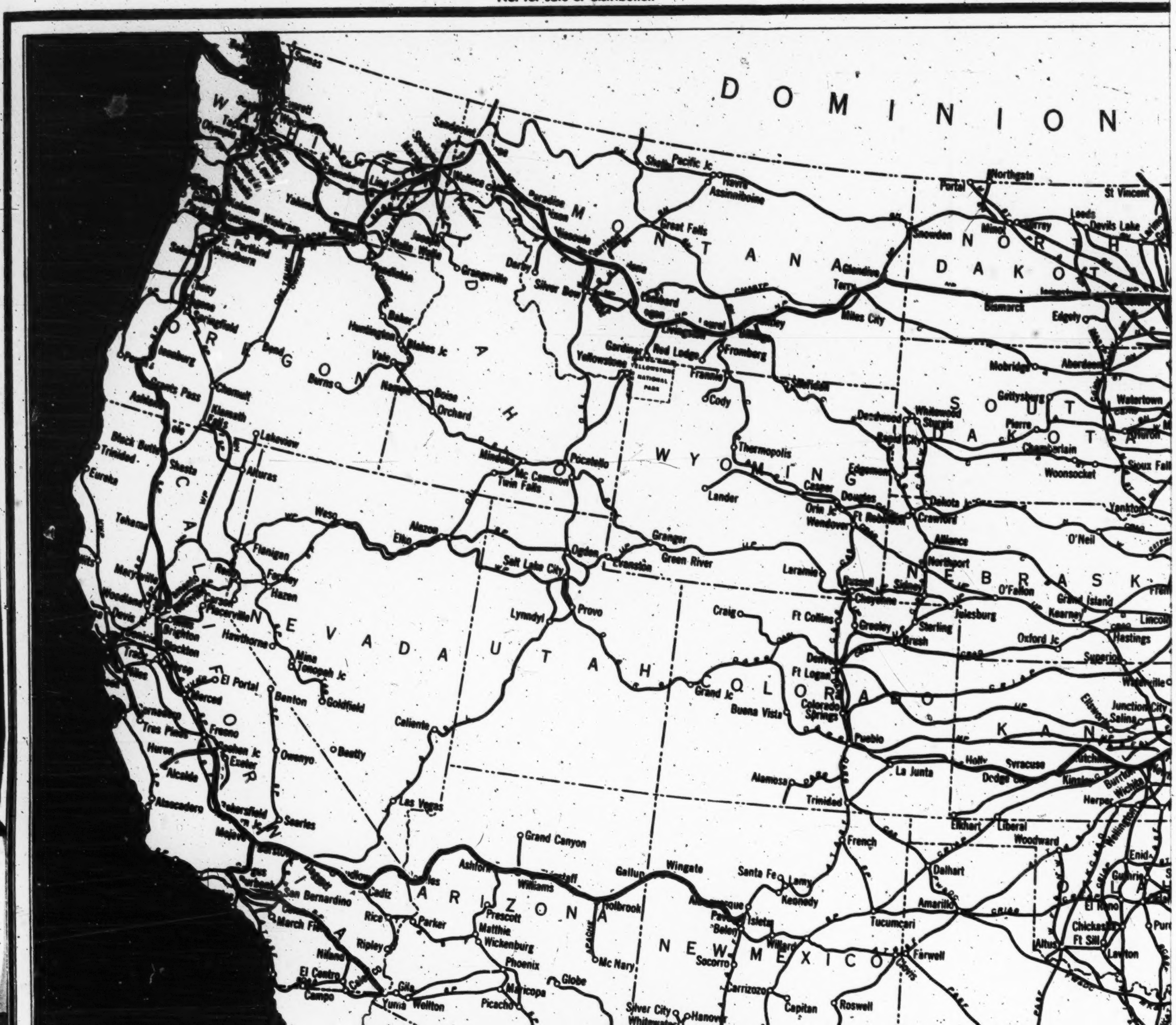

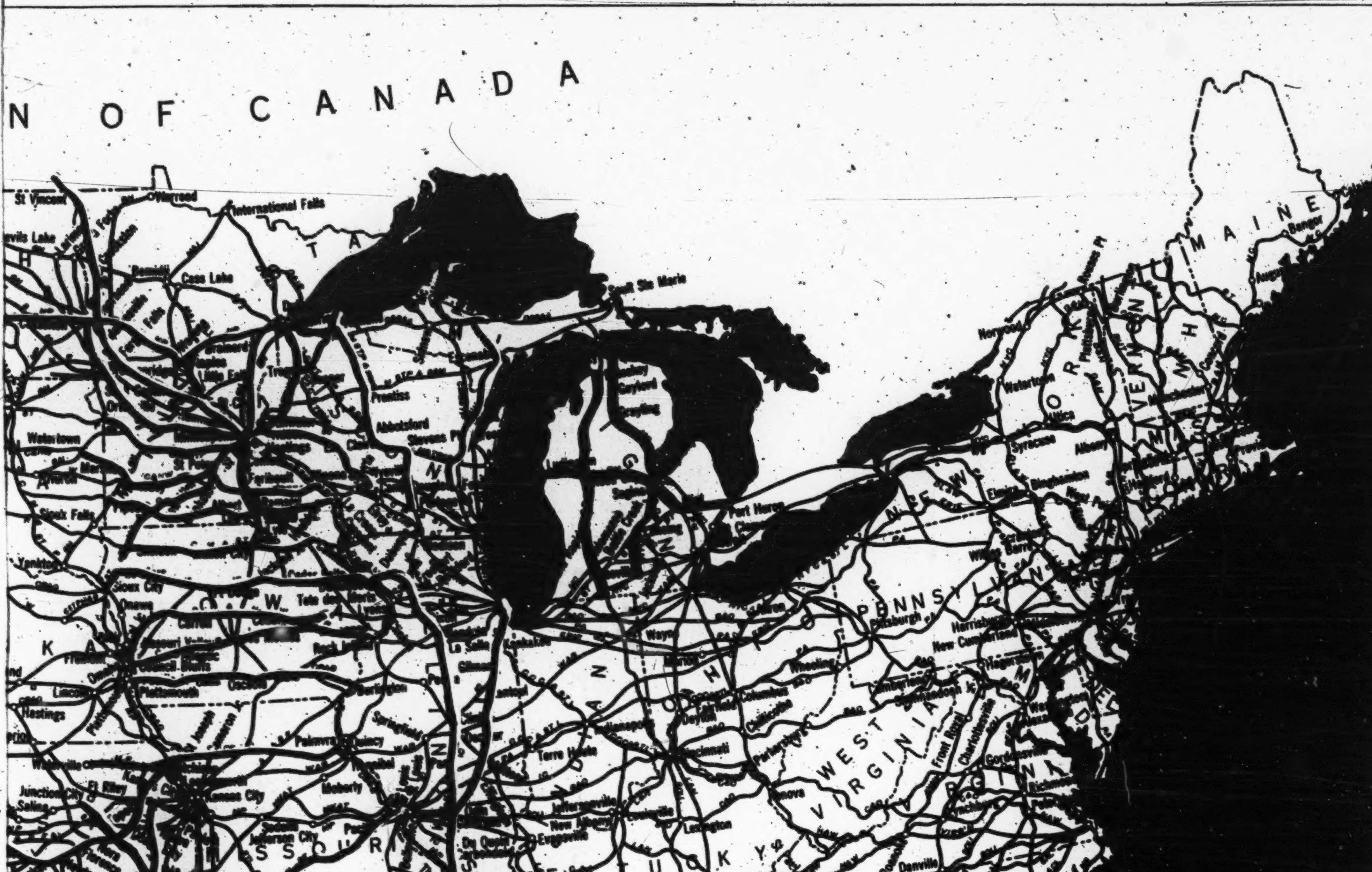
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WEST VIRGINIA
St Vincent
International Falls
Bemidji
Cass Lake
Sault Ste Marie
Prentiss
Abbotsford
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Sioux Falls
Yankton
Sioux City
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Louisville
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Harrisburg
New Cumberland
Hagerstown
Cumberland
Front Royal
Charlottesville
Richmond
Danville
Norton
Bristol
Greensboro
Rocky Mount
Fayetteville
Asheville
Greenville
Spartanburg
Greenwood
Columbia
Florence
Augusta
Macon
Savannah
Anniston
Childersburg
Port Huron
Norwood
Watertown
Syracuse
Albany
Bangor

[fol. 115] PLAINTIFF'S EXHIBIT No. 1 TO AGREED STATEMENT OF FACTS

Southern Railway System

Office of Vice President

In Charge of Traffic

Washington, D. C.

E. R. Oliver, Vice-President.

November 29, 1933. c 32937.

Freight Land-Grant Equalization Agreement

The Quartermaster General, War Department, Washington, D. C.

SIR:

1. The following carriers:

Southern Railway Company,
The Alabama Great Southern Railroad Company,
The Cincinnati, New Orleans & Texas Pacific Railway Company,
Georgia, Southern & Florida Railway Company,
New Orleans & Northeastern Railroad Company,
Northern Alabama Railway Company,

hereinafter called these carriers, hereby agree, subject to the conditions and exceptions stated below, to accept for the transportation of property shipped for account of the Government of the United States and for which the Government of the United States is lawfuly entitled to reduce rates over land-grant roads, the lowest net rates lawfully available, as derived through deductions account of land-grant distance from the lawful rates filed with the Interstate Commerce Commission applying from point of origin to destination at time of movement.

2. Conditions—

(a) On traffic destined to and/or received from points on lines of other carriers this agreement will only apply in connection with such carriers as have an agreement of the form stated in paragraph 1 above on

file with the Quartermaster General, War Department, Washington, D. C., except as otherwise provided under the heading of Exceptions in paragraph 3 below.

(b) On traffic destined to and/or received from points on lines of other carriers this agreement is subject also to the exceptions in agreements of each individual carrier forming part of the through route of movement, on file with the Quartermaster General, War Department, Washington, D. C., except as may be otherwise provided under the heading of Exceptions in paragraph 3 below.

[fol. 116] 3. Exceptions—

(a) On traffic moving from or to points in Trunk Line and New England Freight Association territories the provisions of Conditions (a) and (b) in paragraph 2 above are hereby waived, provided the traffic moves in connection with these carriers via Potomac Yard, Pinners Point or Strasburg Junction, Va.

(b) On traffic moving from or to points in Central and Illinois Freight Association territories the provisions of Conditions (a) and (b) in paragraph 2 above are hereby waived, provided the traffic moves in connection with these carriers via Cincinnati, Ohio, Louisville, Ky., East St. Louis, Ill., or other junction points on St. Louis Division of Southern Railway Company.

(c) Handling of shipments in services such as car ferry, floatage, lighterage, and/or switching, by carriers that have not filed with The Quartermaster General, War Department, Washington, D. C., an agreement of the form stated in paragraph 1 above will not in any way affect this agreement. On such shipments the agreement carriers forming a part of the through route of movement will protect applicable land-grant deductions just the same as if the car ferry, floatage, lighterage, and/or switching line had an agreement on file with The Quartermaster General, War Department, Washington, D. C.

(d) On traffic moving via all-rail routes these carriers will not equalize net rates which are established via rail and water routes. (Note: The use of lighterage

and/or floatage and/or car ferry service only shall not be construed as rail and water carriage and rate, if and when an otherwise rail rate is employed.)

(e) On traffic moving via rail and water routes these carriers will not equalize net rates which are established via all-rail routes.

(f) These carriers will not equalize net land grant rates, except on United States Government property shipped on Government bills of lading, the transportation charges on which are paid to the carrier by and borne by the United States Government.

(g) This agreement does not apply to any traffic handled for account of: The District of Columbia.

[fols. 117-118] (h) The Southern Railway Company on its line in Indiana and Illinois will not equalize net land-grant rates except on traffic originating at or destined to points in Southern Freight Association territory.

4. This agreement becomes effective December 1, 1933 and remains in effect until January 1, 1935, and thereafter from year to year unless these carriers file notice of withdrawal or change with The Quartermaster General, War Department, Washington, D. C., at least sixty days prior to the beginning of any calendar year.

5. This agreement cancels all previous equalization agreements, if any, on freight traffic filed by these carriers.

Respectfully submitted, Southern Railway Company, The Alabama Great Southern Railroad Company, The Cincinnati, New Orleans & Texas Pacific Railway Company, Georgia Southern & Florida Railway Company, New Orleans & Northeastern Railroad Company, Northern Alabama Railway Company, E. R. Oliver, Vice-President.

Accepted for The Quartermaster General: By R. E. Shannon, Capt., Q. M. C., Ass't.
Date: December 5, 1933.

(Here follows 1 photolithograph, side folio 119)

[fol. 120] IN THE SUPREME COURT OF THE UNITED STATES

STIPULATION AS TO PRINTED RECORD

It is stipulated and agreed by and between the parties hereto that documents marked "Plaintiff's Exhibit No. 40," "Plaintiff's Exhibit No. 42," "Plaintiff's Exhibit No. 44" and "Plaintiff's Exhibit No. 46," in the transcript of the record certified herein by the Assistant Clerk, Court of Claims of the United States, may be omitted from the printed record herein, said documents being further identified by page number of the certified transcript as follows: Plaintiff's Exhibit No. 40—pages 120, 121; Plaintiff's Exhibit No. 42—page 122; Plaintiff's Exhibit No. 44—page 123; and Plaintiff's Exhibit No. 46—page 124.

It is expressly understood and agreed that either party hereto may refer to any part of the record not printed, in brief or argument, to the same extent as if the same were made a part of the printed record.

Seddon G. Boxley, Counsel for Petitioner. Charles Fahy, Solicitor General of the United States, ——, Attorney, Counsel for Respondent.

Endorsed on Cover: File No. 48,071. Court of Claims. Term No. 578. Southern Railway Company, Petitioner, vs. The United States. Petition for a writ of certiorari and exhibit thereto. Filed January 4, 1944. Term No. 578, O. T. 1943.

[fol. 121] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed March 6, 1944

The petition herein for a writ of certiorari to the Court of Claims is granted, and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

MAP OF
LAND-GRANT AND BOND-AIDED RAILROADS OF THE UNITED STATES

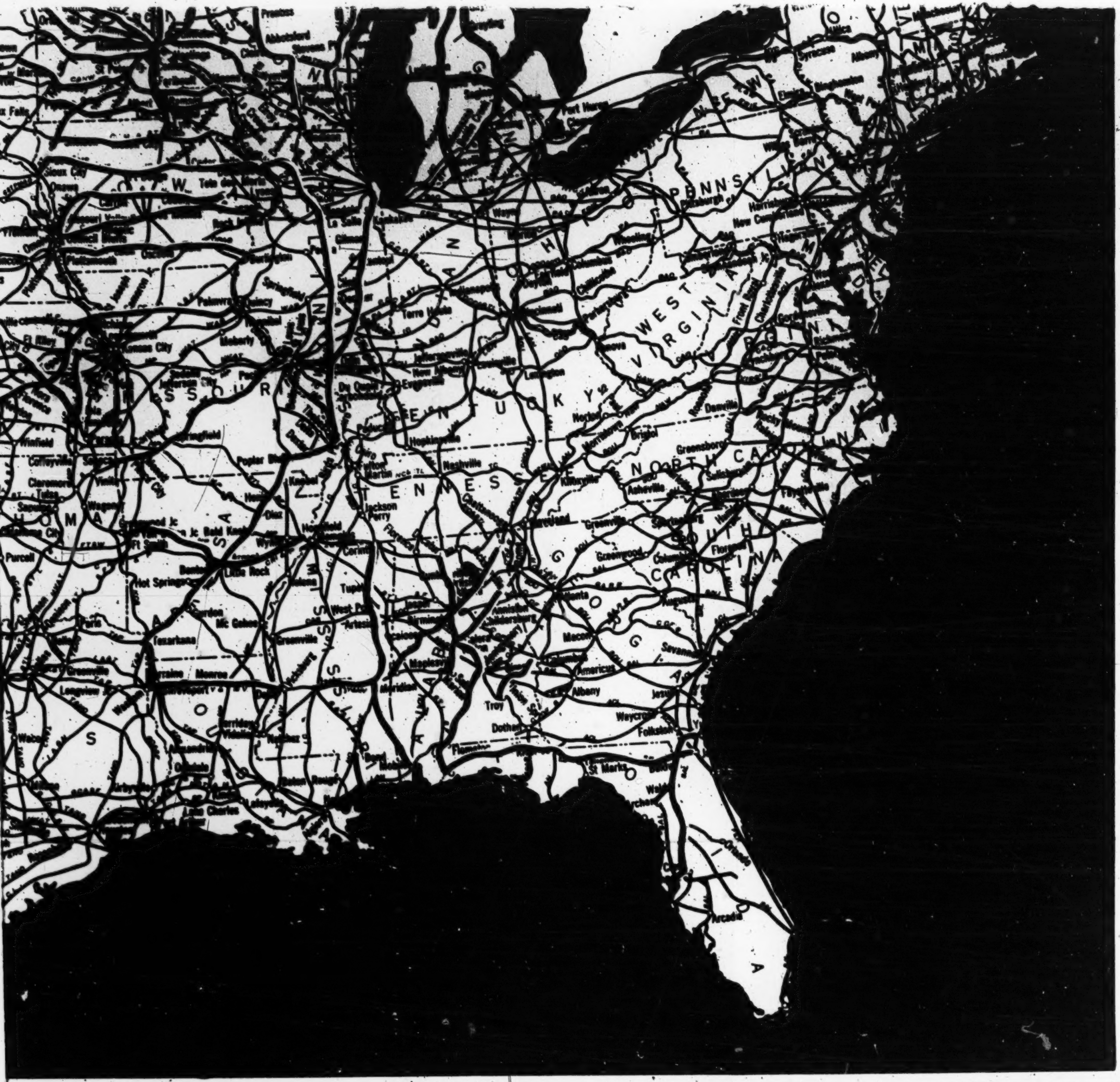
REVISED TO APRIL 1, 1943

Bond-aided Roads

Fifty per cent Land-Grant Roads

Connections

Prepared under direction of the Quartermaster General, War Department



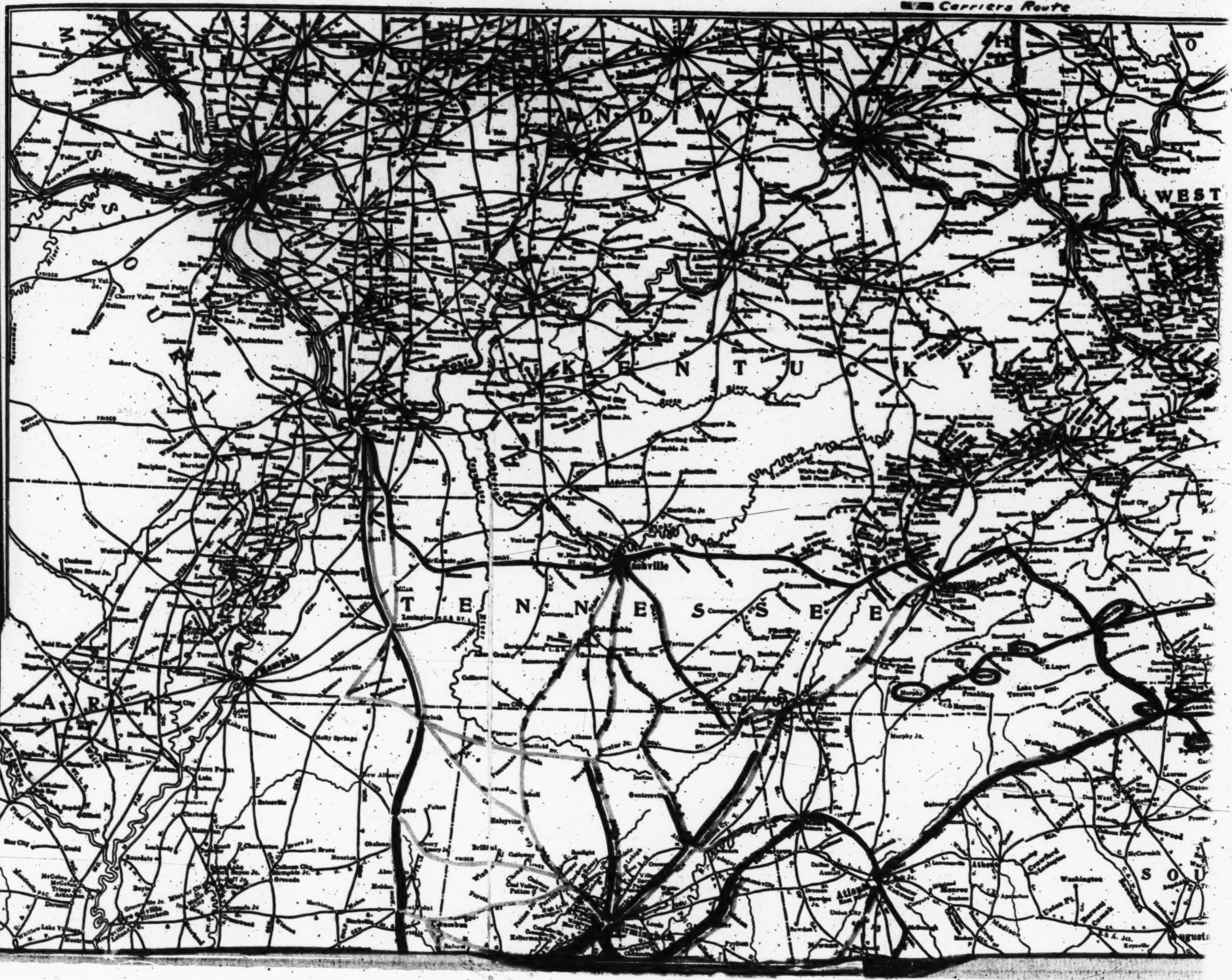
8,500,000

REPRODUCTION BY 30TH ENGINEERS, FORT BELVOIR, VA., AMS NO. 104505 D

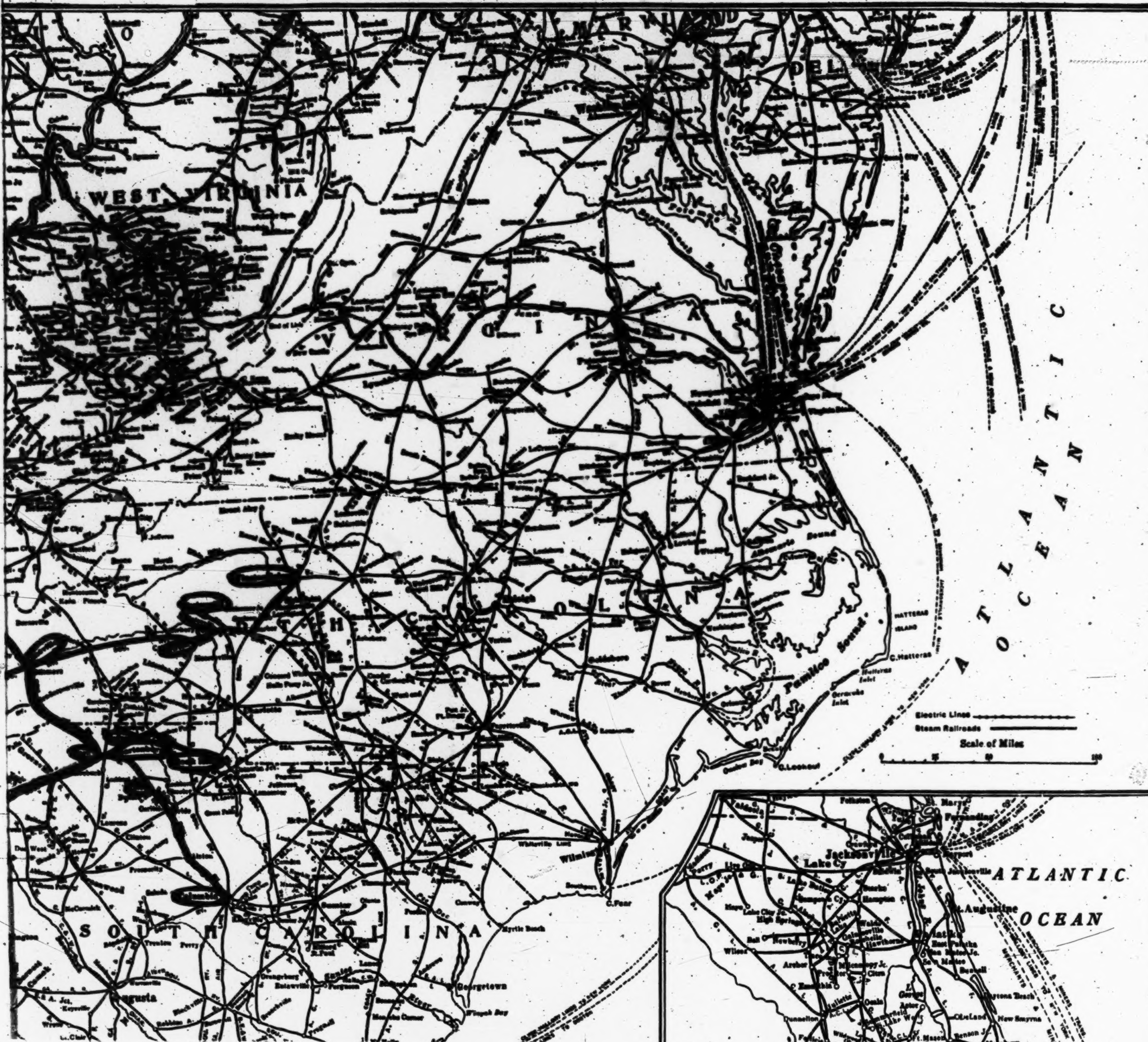
ARMY MAP SERVICE, U S ARMY, WASHINGTON, D C 104505
1943

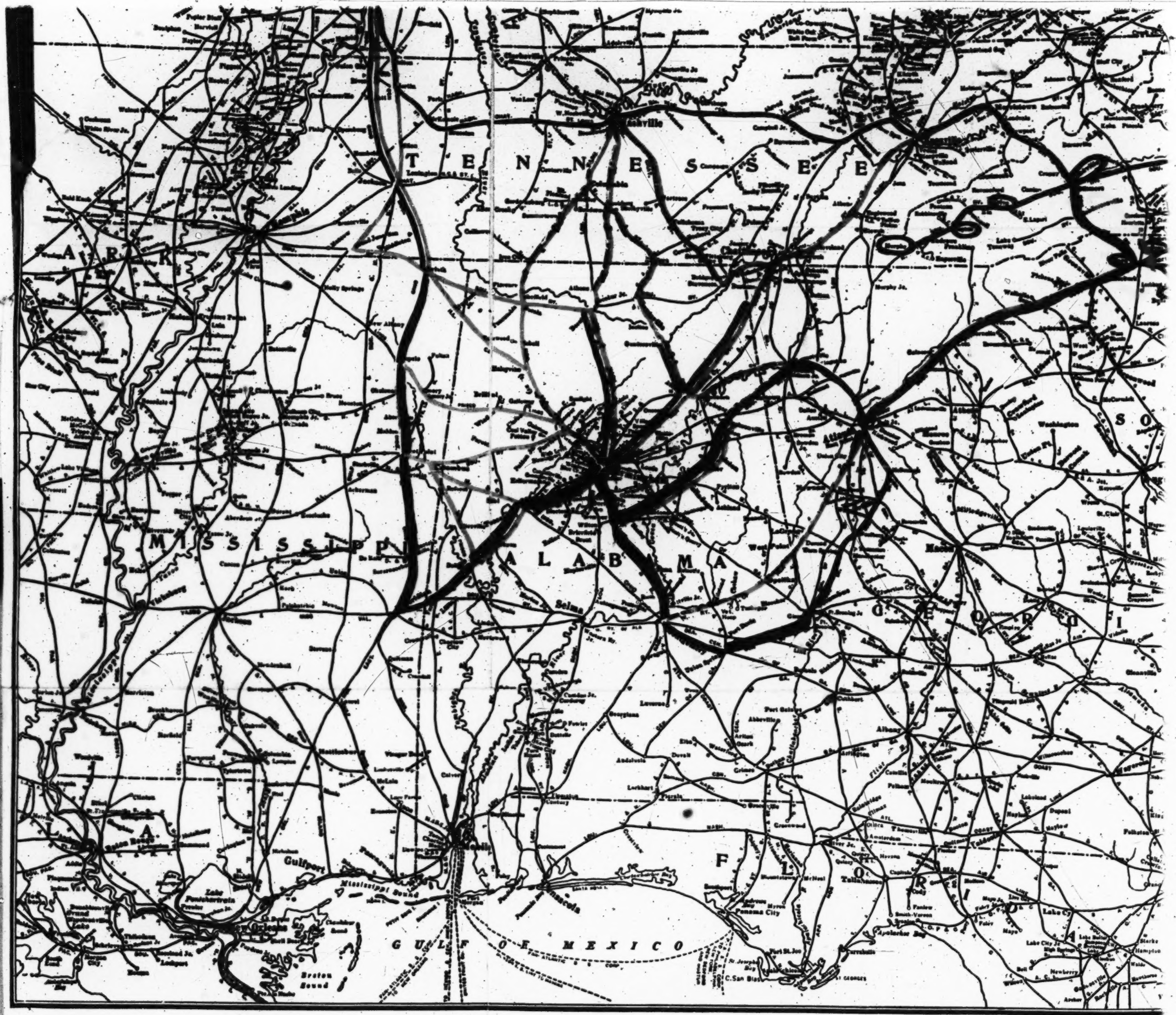
Land Grant
Government Route
Intermeate Route
Carriers Route

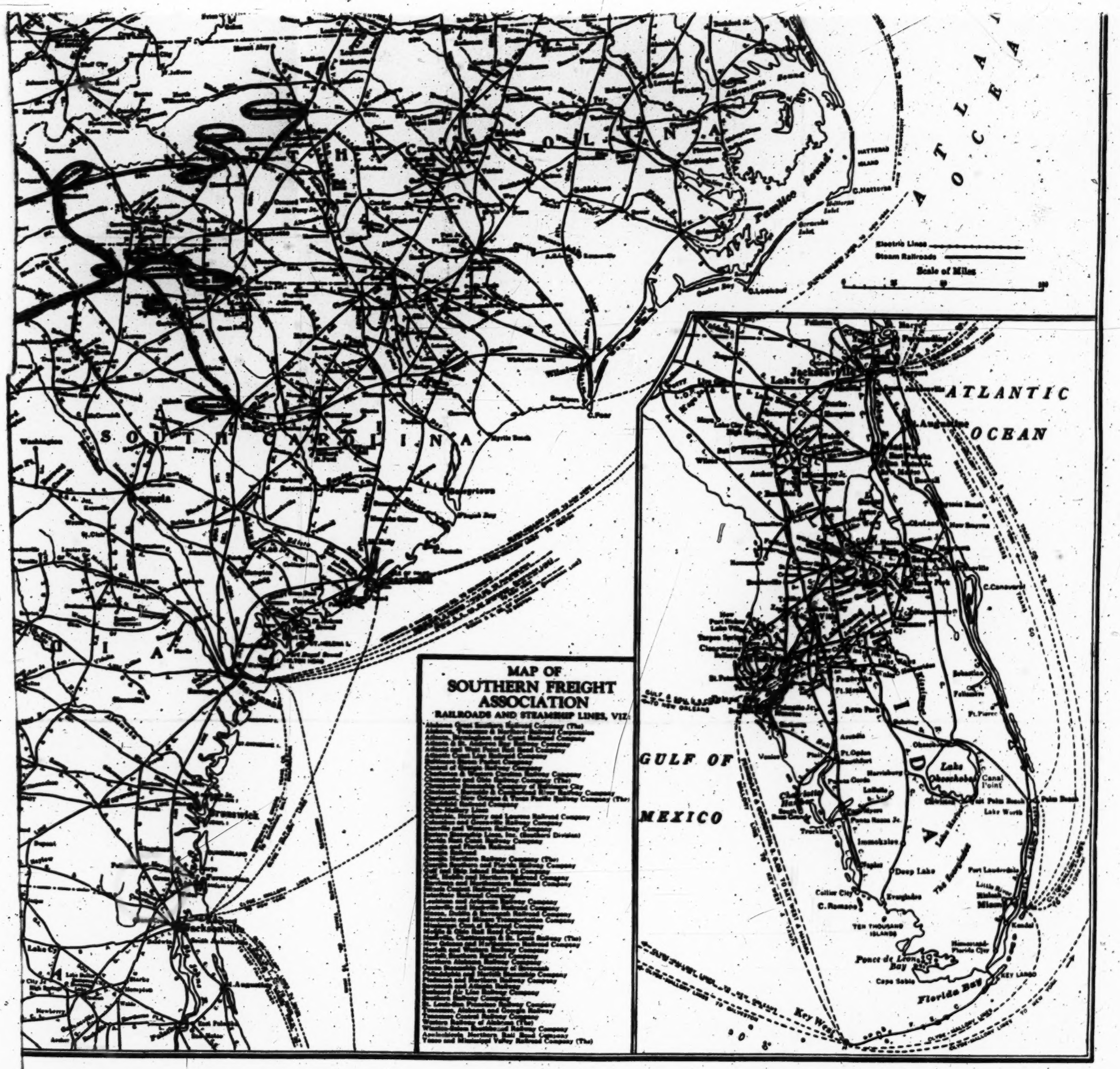
PLAINTIFF



PLAINTIFF'S EXHIBIT NO. 26 (Referred to in Court's Findings)




T E N N E S S E E
A R K
M I S S I S S I P P I
A L A B A M A
G E O R G I A
F L O R I D A
L A
Gulfport
Mississippi Sound
Lake Pontchartrain
New Orleans
Breton Sound
Selma
Montgomery
Tallahassee
Panama City
Apalachicola Bay
Lake City
G U L F O F M E X I C O



MAP OF SOUTHERN FREIGHT ASSOCIATION

RAILROADS AND STEAMSHIP LINES, VIZ.

FILE COPY

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 578

SOUTHERN RAILWAY COMPANY,
Petitioner,

vs.

THE UNITED STATES.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS.

SIDNEY S. ALDERMAN,
SEDDON G. BOXLEY,
Counsel for Petitioner.

S. R. PRINCE,
Of Counsel.

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Brief.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 578

SOUTHERN RAILWAY COMPANY,
Petitioner,

vs.

THE UNITED STATES.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS AND BRIEF IN SUPPORT THEREOF.

Petition.

Petitioner prays this Court to review on writ of certiorari a judgment of the Court of Claims of the United States, in the case there entitled *Southern Railway Company* v. *The United States,* No. 45227, rendered on the 4th day of October, 1943 (R. 47), and based upon a written opinion by that court rendered on the same date (R. 25-47).

I.

Summary Statement of the Matter Involved.

This was an action by Southern Railway Company, plaintiff below, petitioner here, to recover certain undercharges alleged to be due for the transportation of various ship-

ments of Government-owned property. There were three causes of action. On the first cause of action, petitioner sought judgment in the amount of $9,512.22, and respondent counterclaimed for $1,618.41 claiming an overcharge rather than an undercharge on the shipments involved. On the second cause of action, petitioner sought a judgment for $1,043.14. On the third cause of action, petitioner sought judgment for $324.77. Respondent conceded that petitioner was entitled to recover said sum and this cause of action is not here involved. The court below denied petitioner a recovery on its first and second causes of action and offset the amount it was entitled to recover on its third cause of action against respondent's counterclaim in the first cause of action, and entered judgment for the respondent in the amount of $1,251.73.

On November 29, 1933, petitioner and respondent entered into an agreement entitled "Freight Land-Grant Equalization Agreement," relative to transportation charges on shipments of Government property. This agreement was in full force and effect during the time the shipments involved in the first and second causes of action moved, and by the terms thereof petitioner agreed:

> "To accept for the transportation of property shipped for account of the Government of the United States and for which the Government of the United States is lawfully entitled to reduced rates over land-grant roads, the lowest net rates lawfully *available*, as derived through deductions account of land-grant distance from the lawful rates filed with the Interstate Commerce Commission *applying* from point of origin to destination at time of movement."[1]

It is shown of record (R. 48-49) and admitted in respondent's brief in the court below that the purpose of this

[1] Italics ours unless otherwise indicated.

agreement is to obtain for petitioner traffic which might otherwise move over competing land-grant routes. On page 180 of respondent's said brief, the following appears:

> "It need not be questioned, therefore, that the inducement to this form of equalization agreement on the part of the carriers was to obtain for them, as plaintiff apparently urges, traffic which would otherwise be likely to *move over land-grant lines* with which the equalizing lines must compete."[2]

Petitioner contended in the court below that under the language of the Equalization Agreement and its obvious purpose, petitioner is only required to equalize net rates *computed via competitive land-grant routes; that is, routes over which Government traffic might normally move in the absence of the agreement.* Respondent, on the other hand, took the flat position that under the agreement petitioner is required to equalize net rates computed via the land-grant route in fact producing the lowest net rate, *regardless of whether such route is competitive, i.e. regardless of whether such route is or is not one over which Government traffic might normally move in the absence of the agreement, and regardless of how circuitous and impractical it may be.*

The court below ignored the proved and admitted purpose of the Equalization Agreement, and made a finding directly contrary thereto (Finding 3, R. 26-28). It then held that the agreement was plain and not subject to construction; and, in effect, that the word "available" was synonymous with the word "applying" and that inasmuch as petitioner's tariff rates technically "applied" via routes used by the respondent in computing the net rates, those rates were "available" within the meaning of the agreement, regardless of the unreasonable and impractical nature of the land-grant routes used to produce them (R. 42-47).

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[2] Italics respondent's.

(1) *The First Cause of Action.*

In the summer of 1934, the Federal Surplus Relief Corporation, a duly authorized agent of respondent, shipped over petitioner's lines and its connections the 147 shipments of livestock (cattle) listed in Exhibit 4 to the petition herein (R. 20A), from points in Minnesota, Kansas, Illinois, Iowa, Missouri, Wisconsin, and Nebraska to points in North Carolina, South Carolina, Georgia, and Virginia. Petitioner abandoned the undercharges originally claimed on 17 of the foregoing shipments, including all shipments destined to points in Georgia and Tennessee. All of the shipments listed in said Exhibit 4 consisted of drought cattle moved by respondent from drought-stricken areas to grazing lands in the South (Findings 4, 5 and 10, R. 28, 33).

The shipments generally moved via direct routes from origins to destinations, the great majority through such junctions as Cincinnati, Ohio, and Elkhorn City, Kentucky (Finding 8, R. 30), but because of the equalization agreement the net charges thereon were not computed by either petitioner or respondent over said routes (Finding 7, R. 29). Petitioner conceded that under the equalization agreement respondent was entitled to the benefit of deductions from the commercial rates on account of land-grant mileage on all shipments from their respective origins to Cairo, Illinois, and both petitioner and respondent computed the net charges via the same land-grant routes as far south as Cairo. Hence, there is no dispute regarding net charges north of Cairo (Finding 6, R. 29).

At that point, however, petitioner's and respondent's rate-making routes diverged. Petitioner computed the net charges from Cairo to the respective destinations via Illinois Central Railroad to Martin, Tennessee; thence via Nash-

ville, Chattanooga & St. Louis Railway to Nashville, Tennessee; thence via Tennessee Central Railroad to Harriman, Tennessee; thence via petitioner's line to destination. This route does not contain any land-grant mileage (Finding 7, R. 29).

Respondent used two different routes in computing the net charges south of Cairo to the respective destinations. On Items 121, 141, 142 and 143, of said Exhibit 4, respondent computed the net charges from Cairo to destination via Mobile & Ohio Railroad to Meridian, Mississippi; thence via Alabama Great Southern Railroad to Birmingham, Alabama; thence via Louisville & Nashville Railroad to Montgomery, Alabama; thence via Central of Georgia Railway to Columbus, Georgia; thence via petitioner's line to destination. On all other shipments listed in said Exhibit 4, respondent computed the net charges from Cairo to destination via Mobile & Ohio Railroad to Meridian, Mississippi; thence via Alabama Great Southern Railroad to Birmingham, Alabama; thence via Louisville & Nashville Railroad to Calera, Alabama; thence via petitioner's line to destination. These routes include certain land-grant mileage of the Mobile & Ohio Railroad between Cairo and Meridian; of the Alabama Great Southern Railroad between Meridian and Chattanooga; of the Louisville & Nashville Railroad between Birmingham and Montgomery; of the Central of Georgia Railway between Montgomery and Columbus; and of petitioner between Calera, Alabama, and Spartanburg, South Carolina (Finding 8, R. 30).

Petitioner's and respondent's rate-making routes are shown on a map filed in the court below as plaintiff's Exhibit 26, said exhibit being made a part of the Special Findings of Fact by reference (Finding 10, R. 33). Petitioner's rate-making route south of Cairo is shown thereon in green; respondent's route in blue; certain alternative

routes in yellow, and land-grant mileage in red.[3] The mileage via the route of actual movement, the mileage via petitioner's rate-making route, and the mileage via respondent's rate-making routes, and the excess mileage of respondent's rate-making routes over the route of actual movement are shown on a table appearing on pages 31-33 of the record (Finding 9). As there shown, the mileage of respondent's route through Meridian, Mississippi, and Columbus, Georgia, on shipments covered by Items 121, 141, 142 and 143 of said Exhibit 4, exceeded the mileage of actual movement well over 550 miles. On the remaining shipments the mileage of respondent's route through Meridian, Mississippi and Birmingham and Calera, Alabama, exceeded the mileage of the route of actual movement in all but 17 cases by from 300 to over 600 miles. On those 17 shipments, respondent's route exceeded the route of actual movement from 137 to 289 miles.

Said rate-making routes relied on by respondent are not used for the movement of commercial traffic and if actually used by respondent would have required two or three stops for feed, water and rest additional to those required on the route in fact traversed, and a minimum of three additional days in transit. Each stop for food, water and rest would have cost respondent a minimum of $2.50 per car. The number of cars in each shipment ranged from 1 to 19, with an average of 5 cars to a shipment (Finding 10, R. 33). On this basis the cost to repsondent, if the shipments had actually moved over the respondent's rate-making routes, would have amounted to $25.00 for two stops and to $37.50 for three stops. A reference to Exhibit 4 to the petition herein (R. 20A) will show that this extra expense of $27.50 for three stops would have actually exceeded the savings in

---

[3] The alternative routes are not material for the purpose of this petition and the review here sought and will not be further noticed.

transportation charges incident to the use of such routes on 57 out of the 130 shipments on which petitioner sought judgment. On the basis of only two stops via respondent's routes, the cost of $25.00 would have actually exceeded the savings in rates incident to the use of such routes on 40 out of the 130 shipments. When it is considered that out of the entire 130 shipments the savings in rates incident to the actual use of respondent's routes would have exceeded $100.00 on only 27 of them, it is apparent that where the increased expense did not actually exceed the savings, such savings would have in all cases have been very materially reduced.

Furthermore, in addition to the increased cost as above stated, the actual use of respondent's routes would have confined the distress livestock in the cars a minimum of three days more than was required on the route in fact traversed, and would have subjected them to a gruelling and hazardous journey through the deep south during July, August, and September, exceeding in most cases by hundreds of miles the routes actually travelled (Findings 9 and 10, R. 30-34).

It is plain from the foregoing that the routes used by respondent in computing the net rates are impractical and non-competitive on traffic from the origins to the destinations here involved and petitioner's transportation witness of thirty-seven years' experience so testified (R. 49-51). The court below failed to find these ultimate facts, which are fully supported by the record, and erred in so failing.

(2) *The Second Cause of Action.*

Between July 24, 1934, and February 17, 1938, there was shipped over petitioner's lines and its connections by, or on behalf of, the Tennessee Valley Authority, a duly authorized agency of the United States, the 227 shipments

of Government property listed in Exhibit 8 to the petition herein (Finding 12, R. 35). Petitioner abandoned the alleged undercharges on a large number of said shipments and now claims undercharges only on the items listed in Finding 13 (R. 35).

With the exception of the shipments covered by Finding 18 (R. 38) from Chicago, Illinois, to Coal Creek, Tennessee, all these shipments moved from origin to destination via petitioner's line direct for comparatively short distances, ranging from 44 to 200 miles, and petitioner claimed the full commercial rates applying via said routes. Respondent, in order to take advantage of land-grant routes, computed the net rates over routes from three to nine times the length of the routes of actual movement, the percentage of circuity of the rate-making routes over the routes actually used ranging from 257% on the shipments covered by Finding 19 to 893% on the shipments covered by Finding 14 (R. 36). Respondent's rate-making routes are not used for the movement of commercial traffic and include the lines of at least three different railroads (Findings 14, 15, 16, 17, 19, 20, 21, 22 and 23, R. 36-41). If the shipments involved had actually moved over respondent's said routes they would have been greatly delayed in reaching destination and would have been subjected to greatly increased risk of loss or damage, said increased risk being due both to increased mileage and the necessity of interchange or transfer between the railroads involved.

On shipments from Chicago, Illinois, to Coal Creek, Tennessee, covered by Finding 18 (R. 38), petitioner's rate-making route south of Cairo, and respondent's rate-making route south of that point are the same as those involved on the great majority of the shipments embraced in the first cause of action.

II.

The Questions Presented and Errors Assigned.

1. There is no evidence to sustain the finding of the court below as to the purpose of the Equalization Agreement and it erred in finding the purpose of said agreement to be:

> "3. The purpose and effect of the freight equalization agreements of the defendant with plaintiff and with other common carriers was to equalize rates on Government property over various routes serving the same point of origin and destination, where one or more of those routes had been aided in whole or in part by grant of public lands, rates over all routes from point of origin to destination being brought down to the level of that over the route producing the lowest net rate on account of land-grant deduction.
>
> "This arrangement was designed to give the equalizing carrier a portion of the Government business that was possible of routing over the governing land-grant route, and to give the Government a greater range in choice of routes where considerations of economy entered into the selection" (R. 26-27).

2. The court below erred in failing to find that the purpose of the Equalization Agreement was to obtain for petitioner Government traffic which in the absence thereof might move over competing land-grant routes.

3. The court below erred in failing to find, as the Commissioner found, that the routes used by respondent for rate-making purposes on the cattle shipments embraced in the first cause of action are impractical.

4. The court below erred in failing to find that the routes used by respondent for rate-making purposes on the cattle shipments embraced in the first cause of action are so circuitous as to be non-competitive on such traffic from the origins to the destinations involved.

5. The court below erred in holding that petitioner was required under the Equalization Agreement to equalize rates computed via the routes used by respondent for rate-making purposes.

6. The court below erred in holding that petitioner was required under the Equalization Agreement to equalize rates on the cattle shipments embraced in the first cause of action computed via the routes used by respondent for rate-making purposes.

III.

Reasons Relied On for Allowance of the Writ.

1. The court below has decided a question of general importance which has not been but should be settled by this Court (Rule 41(3) of this Court).

While the Equalization Agreement here involved is between petitioner and respondent solely, practically every common carrier by railroad in the United States, and some common carriers by water, have entered into agreements in substantially the same form in so far as the question here involved is concerned.

These agreements being national in scope, the decision below constitutes a precedent of general application and is of such importance that it should be reviewed by this Court.

Southern Pac. Co. v. *United States*, 307 U. S. 393, 394, and footnote;

Del Vecchio v. *Bowers*, 296 U. S. 280, 285.

2. The decision below creates a conflict in the decisions of the Court of Claims and for that reason should be reviewed by this Court.

Compagnie Generale Transatlantique v. *Elting*, 298 U. S. 217, 221.

In *Louisville & Nashville R. R. Co.* v. *United States*, 61 Ct. Cls. 1, 11, two equalization agreements were before the court; one requiring the carrier to equalize via "usually travelled routes," and the other providing (just as does the agreement involved in this case) that the carriers would equalize "the lowest net rate lawfully available." The shipments moved from New York and New Jersey to Anniston, Alabama, and the Government had computed the rate via Chicago and Cairo, Illinois. The action was to recover the deductions made from the commercial rates on account of land-grant mileage via the Chicago-Cairo route, and the court held that plaintiff was entitled to recover. It pointed out that if the agreement providing for equalization "via usually travelled routes" was controlling, the Chicago-Cairo route was unauthorized because not a usually travelled route. As to the other agreement requiring the plaintiff to accept the "lowest net rate lawfully available," the court said:

> "• • • It is for construction if uncertain in its application and, in the absence of a specific showing as to its applicability, a reasonable construction must prevail.
>
> • • • • • • •
>
> "The use of this route for equalization purposes in the absence of a showing does not appeal. *It is excessive in its roundabout character and increased mileage.* The defendant, upon this question and to sustain its contention, furnishes the testimony of a witness whose theory is that when a railroad company signs an equalization agreement, it agrees to equalize 'with any kind of a route you can imagine or construct.' *Such a view can not be accepted. It is unreasonable.*"

The decision below is in direct conflict with the holding above set out. The court below in this case held that the Equalization Agreement here involved, which is identical

with that discussed in the above excerpt, was plain, and not subject to construction, and that it required petitioner to equalize rates computed via routes in fact producing the lowest net rates, regardless of their "roundabout character and increased mileage."

It is true that in the *Louisville & Nashville* case the court said that it did not intend to hold anything with reference to the Chicago-Cairo route to the extent of establishing a controlling precedent and that it determined only the case before it, but we understand that language to mean, in the light of the entire opinion, that the court was not satisfied with the record as a whole and that because of that fact it did not wish to establish a precedent *as to the particular route involved;* to wit, the Chicago-Cairo route. We do not understand from the opinion that the court entertained any doubt as to the soundness of its holding that the agreement must be construed reasonably.

In any event, the United States acquiesced in the decision. It filed a petition for certiorari but subsequently dismissed the same, 270 U. S. 645.

The court below referred in its opinion to the *Louisville & Nashville* case as being a case "in which the agreement provided for land-grant deductions 'via the longest land-grant mileage * * * over usually travelled routes'" (R. 44). As we have pointed out, in the *Louisville & Nashville* case the court had before it *two* equalization agreements; one requiring equalization via "usually travelled routes," as stated by the court below, and the other providing that the carriers would equalize "the lowest net rate lawfully available." From the brief reference which the court below made to the *Louisville & Nashville* case, it seems to have regarded it as involving only one equalization agreement whereunder the carrier was obligated to equalize

the rates applying over "usually travelled routes," whereas in fact the decision as disclosed above was also based on an agreement requiring the carrier to equalize "the lowest net rate lawfully available," a provision identical with ours.

The decision below is also in direct conflict with a pronouncement of the Court of Claims in the case of *Northern Pacific Ry. Co.* v. *United States*, 72 Ct. Cls. 563, 575. There the court defined the word "available" as used in an equalization agreement requiring the carrier to equalize "the lowest net rates lawfully available," saying:

> "'Available' here means not simply those rates computed on the basis of the actual route taken by the shipment, but net rates that, *by comparison with competing routes*, turn out to be the lowest rates. Thus, on a shipment from coast to coast, moving by way of the Northern Pacific lines, the lowest net rates applicable to Army transportation would not be computed by way of the Northern Pacific if some other *proper* route made a less net rate."

3. The question involved can only be litigated in the Court of Claims, except where the amount involved is for $10,000 or less, in which event the District Courts of the United States have concurrent jurisdiction. In these circumstances, there is far less likelihood of litigation in the District Courts which will ultimately result in a conflict of decisions between the Circuit Courts of Appeals than is true in the ordinary case, and this is an additional reason why certiorari should be granted.

Schriber-Schroth v. *Cleveland Trust Co.*, 305 U. S. 47, 50;

Muncie Gear Works, Inc. v. *Outboard Marine & Mfg. Co.*, 315 U. S. 759, 765, 766.

Wherefore, it is respectfully submitted that this petition for writ of certiorari should be granted.

SOUTHERN RAILWAY COMPANY,
Petitioner.

By SIDNEY S. ALDERMAN,
SEDDON G. BOXLEY,
Attorneys for Petitioner.

S. R. PRINCE,
Of Counsel.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 578

SOUTHERN RAILWAY COMPANY,
Petitioner,

vs.

THE UNITED STATES,
Respondent.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI.

I.

The Opinion of the Court Below.

The opinion of the Court of Claims of the United States has not yet been reported, but a copy thereof will be found in the record, beginning at page 25.

II.

Jurisdiction.

The date of the entry of the judgment here sought to be reviewed is October 4, 1943 (R. 47).

This Court has jurisdiction by virtue of 43 Stat. 940, 28 U. S. C. 350, and 43 Stat. 939 (as amended by 53 Stat. 752), 28 U. S. C. 288 (b).

III.

Statement of the Case.

The accompanying Petition for Writ of Certiorari concisely states the relevant facts. Reference to the facts will be made and repeated in the body of this brief only insofar as may be necessary in the discussion of the questions involved.

IV.

Specifications of Errors.

The errors assigned are stated in the accompanying petition, but are repeated here for convenience:

1. There is no evidence to sustain the finding of the court below as to the purpose of the Equalization Agreement, and it erred in finding the purpose of said agreement to be:

> "3. The purpose and effect of the freight equalization agreements of the defendant with plaintiff and with other common carriers was to equalize rates on Government property over various routes serving the same point of origin and destination, where one or more of those routes had been aided in whole or in part by grant of public lands, rates over all routes from point of origin to destination being brought down to the level of that over the route producing the lowest net rate on account of land-grant deduction.
>
> "This arrangement was designed to give the equalizing carrier a portion of the Government business that was possible of routing over the governing land-grant route, and to give the Government a greater range in choice of routes where considerations of economy entered into the selection" (R. 26-27).

2. The court below erred in failing to find that the purpose of the Equalization Agreement was to obtain for petitioner Government traffic which, in the absence thereof might move over competing land-grant routes.

3. The court below erred in failing to find, as the Commissioner found that the routes used by respondent for rate-making purposes on the cattle shipments embraced in the first cause of action are impractical.

4. The court below erred in failing to find that the routes used by respondent for rate-making purposes on the cattle shipments embraced in the first cause of action are so circuitous as to be non-competitive on such traffic from the origins to the destinations involved.

5. The court below erred in holding that petitioner was required under the Equalization Agreement to equalize rates computed via the routes used by respondent for rate-making purposes.

6. The court below erred in holding that petitioner was required under the Equalization Agreement to equalize rates on the cattle shipments embraced in the first cause of action computed via the routes used by respondent for rate-making purposes.

V.

Summary of the Argument.

I.

THE EQUALIZATION AGREEMENT IS AMBIGUOUS, AND IS THEREFORE SUBJECT TO CONSTRUCTION BY THE STANDARD RULES FOR CONSTRUING AMBIGUOUS CONTRACTS.

(1) The Word "Available," as Used in the Equalization Agreement, Is Ambiguous in Itself.

(2) Even If the Word "Available," As Used In the Equalization Agreement, Could Be Deemed Unambiguous in Itself, it Nevertheless Becomes Ambiguous When Applied to the Facts of this Case.

II.

THE PURPOSE OF THE EQUALIZATION AGREEMENT IS TO SECURE FOR PETITIONER COMPETITIVE TRAFFIC, I.E., TRAFFIC WHICH, IN THE ABSENCE OF THE AGREEMENT, MIGHT OTHERWISE MOVE OVER COMPETING LAND-GRANT ROUTES, AND THE COURT BELOW ERRED IN FAILING SO TO FIND.

III.

THE PURPOSE OF THE EQUALIZATION AGREEMENT BEING TO SECURE COMPETITIVE TRAFFIC, I.E., TRAFFIC WHICH, IN THE ABSENCE OF THE AGREEMENT, MIGHT OTHERWISE MOVE OVER COMPETING LAND-GRANT ROUTES, IT SHOULD BE CONSTRUED SO AS TO GIVE EFFECT TO THAT PURPOSE AND, AS THE ROUTES RELIED ON BY RESPONDENT FOR RATE-MAKING PURPOSES ARE NON-COMPETITIVE, PETITIONER IS NOT REQUIRED TO EQUALIZE RATES COMPUTED VIA SUCH ROUTES.

IV.

THE LANGUAGE OF THE EQUALIZATION AGREEMENT STANDING ALONE, WHEN FAIRLY AND REASONABLY CONSTRUED, DOES NOT REQUIRE PETITIONER TO EQUALIZE RATES COMPUTED VIA ROUTES RELIED UPON BY RESPONDENT FOR RATE-MAKING PURPOSES, THE WORD "AVAILABLE" BEING USED IN SAID AGREEMENT IN A RESTRICTIVE, AS DISTINGUISHED FROM A BROAD OR EXTENSIVE SENSE.

V.

THE EQUALIZATION AGREEMENT BEING SUSCEPTIBLE OF MORE THAN ONE INTERPRETATION, IT WILL BE GIVEN A REASONABLE, AS OPPOSED TO AN UNREASONABLE, CONSTRUCTION, AND AN IN-

TERPRETATION REQUIRING PETITIONER TO EQUALIZE NET RATES COMPUTED VIA THE ROUTES RELIED UPON BY RESPONDENT FOR RATE-MAKING PURPOSES WOULD BE SO UNFAIR, UNREASONABLE AND ABSURD THAT IT WILL NOT BE ADOPTED.

VI.

The Argument.

I.

The equalization agreement is ambiguous, and is, therefore, subject to construction by the standard rules for construing ambiguous contracts.

(1) The word "Available," as Used in the Equalization Agreement, is Ambiguous in Itself.

The Equalization Agreement here involved provides that petitioner will accept for the transportation of Government property entitled to reduced rates over land-grant roads, "the lowest net rate lawfully *available*, as derived through deductions account of land-grant distance from the lawful tariffs filed with the Interstate Commerce Commission *applying* from point of origin to destination at time of movement."

The entire controversy in this case turns upon the meaning of the word "available," as used in the paragraph of the Equalization Agreement referred to above. But we do not now take up the merits of that question. Our immediate purpose is to show (1) that the word in itself is ambiguous, and (2) even if this were not true, it nevertheless becomes so when considered in relation to the subject-matter of the contract and the established facts of this case. If either of these propositions be true, the Equalization Agreement is subject to construction according to the accepted canons, one of the most important of which is that a

contract must be construed according to its purpose. And if this agreement is construed according to its proved and admitted purpose, the judgment below must, of necessity, be reversed. The importance of the question justifies the space assigned it.

The court below took the view that the Equalization Agreement was "plain enough, without resort to construction, when it is interpreted according to the ordinary signification of the language used, * * *" (R. 43). Strangely enough, however, the court failed to say just what it considered the "ordinary signification" of the language to be.

By looking to the dictionary and judicial definitions of the word "available," we find that it has a variety of meanings, and that it is sometimes used in a broad or extensive sense and sometimes in a restrictive sense. We deduce from the opinion below that the court was of the view that the word "available," given its ordinary signification, means "usable," or "at one's disposal." Hence, if a tariff rate technically *applies* via a given route, that rate is "available," within the meaning of the Equalization Agreement, regardless of whether the route over which it applies is a competitive route, i.e., one over which the traffic might normally move in the absence of the agreement, and regardless of how impractical and unreasonable it might be. Under this view, if a rate "applies" over a given route, it is "available" in the sense that it is "at the disposal" of the respondent, or is "usable" by it for rate-making purposes, regardless of whether it could *actually* be used to any advantage or to accomplish any purpose. But the word "available," as will be shown below, is ordinarily used in a more restricted sense as meaning "capable of being employed or made use of *with advantage*," "*suitable* for the accomplishment of a purpose," and so forth. We here consider both dictionary and judicial definitions of the controversial word.

Dictionary Definitions of "Available"

Funk & Wagnalls ascribe to the word "available" a variety of meanings. Those more nearly applying to the word, as here used, are:

> "Capable of being employed or made use of with advantage; suitable for the accomplishment of a purpose; usable; at one's disposal."

Webster's New International Dictionary gives substantially the same definitions, to-wit:

> "Such as one may avail oneself of; capable of being used to accomplish a purpose; usable; convertible into a resource."

It is thus seen from the dictionary definitions that the word "available" has no single meaning. It is capable of being understood in more than one sense, and is, therefore, ambiguous. It is *possible* to say, as did the court below, that an "available" rate is one which is "at the disposal" of respondent, or which is "usable" by it, *but without regard to the circumstances or results of such use.*

To illustrate: While the rates here involved *technically* applied via the routes relied upon by respondent for rate-making purposes, and hence were *theoretically* at the disposal of respondent, or usable by it, they could not have been *actually* used to any advantage or for the accomplishment of any real purpose.

This is made abundantly clear from the facts stated in the accompanying petition. We there showed in detail (pp. 5-8) that the actual use of respondent's rates and routes on the shipments involved in the first cause of action would have cost respondent in *accessorial* charges more than it would have saved in *transportation* charges in a great many instances, and in all others such costs would have substantially reduced such savings. In addition, of course, the

already debilitated livestock would have been confined a *minimum* of three additional days in transit, and would have been subjected to greatly increased risks of death or injury necessarily inherent in a freight train journey of several hundred additional miles.

The shipments involved in the second cause of action would have been forced to move over roundabout routes from *three* to *nine* times the length of a single-line route actually traveled and involving the lines of *at least three* different railroads. The increased risk of loss or damage in such circumstances, due not only to the increased mileage, but also to the necessity of interchange or transfer between railroads, is apparent, to say nothing of the delay consequent upon the use of such circuitous routes.

In the circumstances outlined, the most that can be said is that the respondent's rates and routes *could* have been used, because the tariffs technically applied.

On the other hand, it might be said, with much reason and common sense, that an "available" rate, within the meaning of the Equalization Agreement, is one which is "capable of being employed or made use of *with advantage*," or which is "*suitable* for the *accomplishment of a purpose*," or which is "convertible into a *resource*."

According to the dictionary definitions above set out, these are indeed the preferred senses of the word, any one of which is equally as applicable here. It is plain that the rates relied upon by respondent could not have been *actually* used or employed by it "with advantage." Neither were such rates "suitable for the accomplishment of a purpose" by respondent, nor "convertible into a resource" by it. Rates which, if used, would result in costs exceeding the savings in transportation charges incident to the use of such rates, or which would not effect any substantial saving and, at the same time, expose the property shipped to the hazards of excessively long and roundabout freight-

train service, are certainly not rates which could be used *with* advantage or which are *suitable* for the *accomplishment of a purpose* or which could be converted into a *resource*. As will be shown briefly immediately below and at greater length later on, the word "available" is quite generally construed by the courts in this restrictive sense.

Judicial Definitions of "Available"

The word "available" has been before the courts in many cases and in many different circumstances. No effort is made here to show all the various senses in which the term has been used, because in a great number of cases, the signification given it could not be applied to the contract now before the court. Those decisions most pertinent to the instant controversy follow.

In *Hamilton* v. *Menominee Falls Quarry Co.*, 106 Wis. 352, 81 N. W. 876, the question was whether there had been a fraudulent transfer of certain quarrying properties, and it was necessary to determine what was meant by "available" assets. There the court said:

> "• • • *The ordinary meaning* of 'available' is 'usable, capable of being used *to advantage'*; and we suppose when the word qualifies assets, as here, it must mean property that can be sold, or turned into cash with which to pay debts within a reasonable time. • • •"[4] (At page 878 of 81 N. W.).

In *Lively* v. *American Zinc Co. of Tennessee*, 137 Tenn. 261, 191 S. W. 975, the court construed the word "*available*" as used in a safety appliance statute, saying:

> "the words in our statute are 'safe and available.' The latter word means *suitable* or usable." (At page 978 of 191 S. W.)

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[4] All italics ours unless otherwise indicated.

Other cases, more fully discussed *infra*, have held that the word "available" means capable of being used to accomplish the purpose intended by the contract or the statute involved, *Woodley Petroleum Co.* v. *Arkansas Louisiana Pipe Line Co.*, 179 La. 136, 153 So. 539; *Bay City Dredge Works* v. *Fox*, 245 Mich. 523, 222 N. W. 747.

Still other cases, greatly in the minority and not warranting further notice, have accorded the word "available" the signification apparently given it by the court below, holding it to mean "accessible" or "at one's disposal." *Nemo* v. *State*, 178 Misc. 328, 34 N. Y. S. (2d) 40; *Schwabacher Hardware Company* v. *Miller Sawmill Company*, 90 Wash. 193, 155 Pac. 767.

Enough has been said to show that, according to both dictionary and judicial definitions, the word "available" is capable of being understood in more than one sense, and is, therefore, an ambiguous term. But here we have more than that to show that the word, as used in the Equalization Agreement, is indubitably an ambiguous one. For what other conclusion could suggest itself to reasonable minds from the fact that the court below first held in *Louisville & Nashville R. R. Co.* v. *United States*, 61 C. Cls. 1, 11 (discussed on pages 10-13 of the accompanying petition) that an equalization agreement, worded identically as the one here involved, was "uncertain in its application," and in the only two subsequent cases involving such an agreement, *Northern Pacific R. R. Co.* v. *United States*, 72 C. Cls. 562, 565, and the instant case, reached opposite conclusions as to the proper interpretation of the disputed term? We submit that this is conclusive evidence that the Equalization Agreement is an ambiguous contract.

The word "available," then, being reasonably capable of more than one interpretation, is an ambiguous term and subject to interpretation by use of the accepted canons of

construction. The rule as to the test of ambiguity is stated in the recent case of *Buchanan* v. *Swift* (C. C. A.—7th) 130 F. (2d) 483, 485. There the court was considering a contract for the maintenance of plaintiff and her two children, and the question was whether the contract was ambiguous, justifying proof of the surrounding circumstances and the object of the parties in making the agreement. On this point the court said:

> "However, before it can be said that there is no ambiguity, the court must conclude that the controversial words are *only capable of one interpretation*, * * * Since the plaintiff's interpretation, in the light of the entire contract, is reasonable enough to preclude us from saying that the District Court's interpretation *was the only one*, we must conclude that paragraph one is ambiguous. Under the circumstances here appearing, we believe the court would be justified in admitting proof of the circumstances surrounding the parties and the object they had in view at the time the contract was made, * * *"

The foregoing rule is too well established to require further discussion. We refer only to the following authorities: *London & Lancashire Indemnity Co. of America* v. *Neil Barron Fuel Co.*, (W. D.—Mo.) 31 F. Supp. 599, 600-601; *Mudgett, et al.*, v. *The United States*, 9 C. Cls. 467; *Thomas, et al.*, v. *Jewell, et al.*, 300 Mich. 556, 2 N. W. (2d) 501, 503; *Wheelwright* v. *Pure Milk Ass'n.*, 208 Wis. 40, 240 N. W. 769, 772; *Paisley* v. *Lucas*, 346 Mo. 827, 143 S. W. (2d) 262; *Blevins* v. *Riedling*, 289 Ky. 335, 158 S. W. (2d) 646.

What we have thus far said has been confined to the proposition that the word "available" is *in itself* ambiguous. We submit that that proposition has been quite fully established. Nevertheless, we now wish to notice briefly the principle that, even though a contract may be deemed clear and un-

ambiguous *in the abstract*, it may, when applied to the facts, become ambiguous and uncertain in meaning so as to require construction.

(2) *Even If the Word "Available," as Used in the Equalization Agreement, Could be Deemed Unambiguous in Itself, it Nevertheless Becomes Ambiguous When Applied to the Facts of This Case.*

It is a well-established rule that, although the words of a contract may be clear and unambiguous *in themselves*, they may, nevertheless, become uncertain and ambiguous when applied to the facts proved, and thus require interpretation.

A recent case on the subject is *Order of United Commercial Travelers of America* v. *Sevier* (C. C. A.—8th), 121 F. (2d) 650, 654. There the court was construing a contract of insurance, and in the course of its opinion, said:

> "A contract may or may not be ambiguous, uncertain or obscure, dependent upon the proven facts. • • • As applied to the facts in this case, this provision is to say the least uncertain, and the intention of the parties is not clearly apparent. • • •"

Another comparatively recent case is *Arkansas Amusement Corporation* v. *Kempner* (C. C. A.—8th) 57 F. (2d) 466, 473-4. There the court said:

> "• • • Of course the words used in a contract, while not ambiguous in the abstract, may, when considered in relation to the circumstances surrounding the making of the same, create an ambiguity requiring interpretation. • • •"

The leading case on the point under consideration in the state courts is *Klueter* v. *Joseph Schlitz Brewing Co.*, 143 Wis. 345, 128 N. W. 43, 45. There the court laid down the rule as follows:

> "It is said that, when the language of a contract is plain, it is not open to construction. That is true in

> the general sense, but, unless viewed broadly, it does not convey accurately the full scope of the field where rules for construction are applicable. The words of a contract, in themselves, may be plain, yet when applied to the situation with which it deals, not plain, *the literal sense leading to such unreasonableness as to suggest that the parties probably did not so intend.* * * * As to when the language of a contract, in its literal sense, is to be taken as expressing the intention of the parties, is correctly indicated by Vattel's rule which has been often cited by this and other courts: 'When the meaning is evident, and leads to no absurd conclusions, there can be no reason for refusing to admit the meaning which the words naturally present.' Note the language 'when the meaning is evident.' *The meaning is not evident when, if looking at the subject-matter, it is so unreasonable as to appear unlikely that the parties so intended.* * * *" (At p. 45 of 128 N. W.)

For additional authorities, see: *Moran* v. *Prather*, 23 Wall. 492, 501; *Mueller* v. *Northwestern Loan Co.*, 125 Wis. 326, 104 N. W. 67; *Murphy* v. *Dilworth*, 137 Tex. 32, 151 S. W. (2d) 1004; *Bamberger Co.* v. *Certified Productions, Inc.*, 88 Utah 194, 48 P. (2d) 489.

If one should adopt the view initially that the Equalization Agreement is plain and unambiguous in itself, requiring petitioner to equalize any rate at respondent's disposal, its unreasonableness, when applied to the facts of this case, becomes so great as to make it appear unlikely that the parties ever intended the contract to have any such meaning and effect. Respondent's rates and routes are utterly impractical, as we have already shown, and we need only say here that, if the Equalization Agreement be construed as above stated, it would require petitioner to equalize rates computed via routes which, because of expense, excessive mileage or other cause, *would never, in fact, be used by respondent!* This, we submit, is such an

absurd and unreasonable result as to create grave doubt that the contract has any such meaning and effect.

From all that has been said, it is plain that the word "available" is capable of being understood in more than one sense and is, therefore, *inherently* ambiguous, rendering the Equalization Agreement on its face doubtful in meaning and intent. It is also clear that, even if this were not true, and the contract standing alone *apparently* required petitioner to equalize any rate at the disposal of respondent, as held by the court below, nevertheless, when so applied to the facts of this case, such an interpretation becomes so unreasonable and leads to such absurd results that the true meaning of the contract becomes uncertain and obscure. In either event the Equalization Agreement is subject to interpretation by the accepted rules of construction.

II.

The purpose of the equalization agreement is to secure for petitioner competitive traffic, i. e., traffic which, in the absence of the agreement, might otherwise move over competing land-grant routes, and the court below erred in failing to so find.

The finding of the court below as to the purpose of the Equalization Agreement is set out in full under "Specifications of Errors," and will not be repeated here. Suffice it to say that the substance of the finding, in part, is that the purpose of the Equalization Agreement is to equalize rates over various routes between the same points so that the rates over all routes would be brought down to the level of that "over the route producing the lowest net rate on account of land-grant deduction." It was further found that the Equalization Agreement was designed to give the equalizing carrier a portion of Government business that

was "*possible* of routing over the governing land-grant route."

There is no testimony in the record or other evidence of any character to support the finding of the court below as to the purpose of the Equalization Agreement. On the contrary, the only testimony on the subject is directly contrary to the finding of the court, as indeed are certain pronouncements of various departments of the Government, *as well as a frank admission by respondent in this very case.*

The purpose of the Equalization Agreement is perfectly plain and well understood. Petitioner's Freight Traffic Manager testified in this case (R. 48-49) that the purpose of the agreement was to "secure the handling of traffic which, in the absence of the agreement might otherwise move over competing railroads." There was no cross-examination of this witness, and his testimony was uncontradicted. Furthermore, as we have said, respondent, in its Brief in the court below, admitted that the purpose of the agreement was as stated by the witness. On page 180 of said Brief, respondent said:

> "It need not be questioned, therefore, that the inducement to this form of equalization agreement on the part of the carriers was to obtain for them, as plaintiff apparently urges, traffic which would otherwise be likely to *move over land-grant lines*[5] with which the equalizing lines must compete."

At least two departments of the Government have also expressly recognized that the foregoing is the obvious purpose of carrier equalization agreements. See *18 Comp. Gen. 691*, discussed *infra*.

It is thus made entirely clear that the purpose of petitioner's Equalization Agreement is *not* (as found by the

[5] Italics respondent's.

court below) to bring down the rates over all routes between two points to the level of that over the route in fact producing the *lowest net rate*, nor to give petitioner a portion of Government traffic that is "possible" of routing over such route. On the contrary, its sole and admitted purpose is to secure for petitioner *competitive* traffic, i. e., traffic which, in the absence of the agreement, would be *likely* to move over *competing land-grant routes*, as distinguished from traffic which is "possible" of routing via the cheapest land-grant route. The distinction is marked and fundamental.

The finding of the court below, therefore, as to the purpose of the Equalization Agreement is clearly erroneous, and should not have been made, while that for which we contend is plainly right and should have been made.

III.

The purpose of the equalization agreement being to secure competitive traffic, i. e., traffic which, in the absence of the agreement might otherwise move over competing land-grant routes, it should be construed so as to give effect to that purpose, and as the routes relied on by respondent for rate-making purposes are non-competitive, petitioner is not required to equalize rates computed via such routes.

We have shown that the word "available" in the Equalization Agreement, is an ambiguous term, and is, therefore, subject to construction by the use of the accepted rules. We have also shown that the purpose of the Equalization Agreement is to secure for petitioner competitive traffic, i. e., traffic which, in the absence of the agreement, might otherwise move over competing land-grant routes.

The established facts of this case, as found by the court below and as stated in the accompanying petition, show beyond question that the rates and routes relied upon by

respondent are not such as respondent ever would have been likely to use if there had been no equalization agreement. We do not here repeat those facts. We do wish to point out, however, that the court below omitted to find (Assignments of Error 3 and 4) as to the shipments involved in the first cause of action that respondent's routes are impractical and non-competitive on traffic from the origins to the destinations involved. In failing so to find, the court committed plain error. These ultimate facts plainly follow from the facts actually found by the court, but in addition, there was ample testimony upon the precise points. Petitioner's transportation witness of thirty-seven years' experience testified unequivocably and without contradiction that respondent's routes were non-competitive and impractical and that "no one would consider routing livestock via such a route and confining your cattle from two to three or four days longer and requiring two to three additional feedings." It is not surprising, under these circumstances, the witness branded respondent's routes as "preposterous" (R. 49-51).

There is attached hereto as Appendix I a map introduced in evidence in the court below as "Plaintiff's Exhibit No. 22," which map illustrates the route of actual movement and petitioner's and respondent's rate-making routes on one of the shipments here involved, respondent's route as there shown being the route used by it on all cattle shipments except four. There is also attached hereto as Appendix II a map introduced in evidence in the court below as "Plaintiff's Exhibit No. 26," which map shows petitioner's rate-making route south of Cairo in green, respondent's two routes south thereof in blue and land-grant mileage in red.[6]

With reference to the shipments involved in the second cause of action, we attach hereto as Appendix III a map

[6] As stated in the accompanying petition, the yellow routes shown on the map are not here material.

introduced in evidence in the court below as "Plaintiff's Exhibit No. 35 (a)," which illustrates the various routes involved on the shipments covered by Finding 14 of the court below (R. 36-37). This map is fairly representative of the general situation on shipments involved in the second cause of action.

Respondent's routes in both causes of action being utterly impractical and such as never would have been used in the absence of the Equalization Agreement, petitioner contends that it it is not obligated to equalize rates computed via such routes, its only obligation being to equalize rates computed via routes which, in the absence of the agreement, might actually be used by respondent. This position is not only in accord with the proved and admitted purpose of the Equalization Agreement, but conforms perfectly to dictionary and judicial definitions of the word "available."

We have shown that the word "available" means "capable of being employed or made use of *with advantage;*" "*suitable* for the *accomplishment of a purpose;*" "convertible into a *resource*." Any of these meanings fits petitioner's contention exactly. As stated, our position is that an "available" rate, within the meaning of the Equalization Agreement, is a rate which, in the absence of the agreement, might be used by respondent for the actual movement of its freight. Now what kind of a rate might respondent use in the absence of the agreement? Certainly not just *any* rate that might lawfully apply and, therefore, be at respondent's "disposal." Plainly it is a rate which respondent could use *to advantage* or for the *accomplishment of its purpose*, or which could be *converted by it into a resource*. It would not use a rate to its *disadvantage* or which would *defeat its purpose*, or which would result in a *liability* to it. Yet, the rates relied upon here by respondent clearly fall within these categories. They could not be used to any advantage whatever because of cost, excessive mileage, and other rea-

sons heretofore explained in detail. Under such circumstances, it is plain that the rates and routes relied upon here by respondent never would have been used by it in the absence of the Equalization Agreement, and hence petitioner is not required to equalize such rates.

We have shown in the accompanying petition that the decision in the instant case is in direct conflict with prior decisions and pronouncements of the court below, and we will not go over all that again, but we do wish to repeat for convenience the language of the court in *Northern Pacific R. R. Co.* v. *United States*, 72 C. Cls. 562, 565. There the court below construed the word "available," as used in these carrier equalization agreements, in precisely the way in which we here contend it should be construed. There the court said:

> "* * * 'Available' here means not simply those rates computed on the basis of the actual route taken by the shipment, but net rates that, *by comparison with competing routes*, turn out to be the lowest rates. Thus, on a shipment from coast to coast, moving by way of the Northern Pacific lines, the lowest net rates applicable to Army transportation would not be computed by way of the Northern Pacific if some other *proper* route made a less net rate. * * *"

The Equalization Agreement here in issue reads exactly like that involved in the above case, and should be construed in the same way. For a rate to be "available" within the meaning of the agreement, it must be computed by a competitive land-grant route, i. e., a route over which the traffic might move in the absence of the agreement, and if there should be more than one such land-grant route, the one producing the lowest net rate may be used.

The same construction is put upon carrier equalization agreements by the Interstate Commerce Commission, a body peculiarly well informed and conversant with car-

rier matters. In *Increased Railway Rates, Fares and Charges, 1942*, 248 I. C. C. 545, 558, 608, commonly known as "Ex Parte 148," the Commission said:

> "The carriers were unable to supply information as to the extent to which their revenues would be depressed in 1942 on account of the rate concessions which must be made on traffic over land-grant routes *and routes competitive therewith:* * * * These land-grant rates apply only upon certain roads and portions thereof, *but are competitively extended to others.* They are now applied to a large and even an increasing proportion of all the shipments made by the Government."

In the above case the Commission did not mention specifically carrier equalization agreements, but obviously it could have had nothing else in mind when it said that rate concessions must be made on traffic over land-grant routes and "routes competitive therewith."

An identical construction has been placed upon carrier equalization agreements like that here involved, by the Secretary of the Treasury and the Comptroller General. In *18 Comp. Gen. 691, 694*, the Comptroller General quoted a letter from Secretary of the Treasury in part as follows:

> "This Department (Treasury) concurs with you (Comptroller General) in the conclusion stated in your letter (pages 5 and 6) that '* * * the route which is sought to be equalized * * * apparently is not used commercially for the movement of gravel from Waters to West Point *and could not reasonably be considered as being a competing route and since the obvious purpose of the carrier's land-grant equalization agreement is to obtain for the carrier traffic which might otherwise move over competing routes, it is not believed that the equalization agreement should be construed so as to require equalization of the land-grant distance in the extremely circuitous route which, apparently, would not have been used for the movement of*

the considered traffic * * *.' This is a principle which Government agencies have long sought to have established and it will materially aid in simplifying the computation of land-grant rates. Furthermore, it will undoubtedly meet with the unqualified approval of the carriers generally. * * *"

And in the body of the opinion, the Comptroller General said:

"But * * * there remained the fact that the wide disparity between the two routes, the one involving a direct one-line haul of approximately 12 miles and the other a four-line haul of 342 miles, was such as to appear clearly not within the *obvious purpose of the equalization agreement, namely, to obtain for the agreement carriers traffic which otherwise might be transported over a land-grant route.* In the absence of any showing of actual facts or circumstances that might justify the Government in demanding transportation via such a route, certainly it cannot reasonably be assumed that any such routing as via the longer line could be in the Government's interests, and the application of the agreement as requiring acceptance of a net rate as via said route would so far transcend any benefits reasonably available *without the agreement as not to be justified in any reasonable view of its purpose and the effect to be given it.*"

Aside from its value as a general precedent, the foregoing decision of the Comptroller General should be especially noticed for the additional reason that it discloses that the principle there enunciated and for which we here contend, to-wit, that carrier equalization agreements should not be construed so as to require equalization via extremely circuitous routes which would never in fact be used, is one "which Government agencies have long sought to have established, and it will materially aid in simplifying the computation of land-grant rates." This statement, by a Governmental agency which unquestionably knows more

about land-grant rates than any other, is a complete answer to the view expressed by the court in the opinion below that "the construction for which plaintiff contends would unavoidably result in uncertainty, confusion and constant controversy, as the facts in this case so clearly demonstrate." *If the facts in this case show uncertainty and confusion, it is because the construction put upon carrier equalization agreements by the Comptroller General in the above case, and here contended for by petitioner, has not been authoritatively established.*

The above decision by the Comptroller General should also be especially noticed because it is peculiarly applicable to the facts surrounding the shipments involved in the second cause of action. There the shipments, with one exception, moved over short, direct, one-line routes, and respondent sought to compute the net rate via routes involving at least a three-line haul and exceeding from three to nine times the length of the route of actual movement. The wide disparity between these routes is clearly unjustified, and is no more within the obvious purpose of the Equalization Agreement than those involved in the above decision.

The foregoing discussion shows that in every instance, prior to the decision in this case, where the court below, the Interstate Commerce Commission or any Government department had occasion to construe carrier equalization agreements like that here involved, it was uniformly held that they should be construed to require equalization by competitive routes, i. e., routes over which the traffic might normally move in the absence of the agreement. All of these decisions are either expressly or by necessary implication bottomed upon the obvious and well-known purpose of carrier equalization agreements, and are in complete accord with both dictionary and judicial definitions of the terms thereof. Yet, in the instant case, the court below ignored all that had been said upon the subject, arbitrarily

adopted an extensive definition of the word "available," *and completely ignored the proved and admitted purpose of the contract before it.*

The proposition that a contract must be construed according to its purpose and so as to give effect to that purpose is too well settled to require anything more than the briefest reference to the authorities. In *Legal Tender Cases*, 12 Wall. 457, 531, 532, this Court said:

> "• • • If the general purpose of the instrument is ascertained, the language of its provisions must be construed with reference to that purpose and so as to subserve it. • • •"

A more recent expression of the rule is found in *Exum, et al.* v. *Laub* (C. C. A.—5th), 87 F. (2d) 73, 74. There the court said:

> "• • • If the phrase in question be regarded as ambiguous, however, or susceptible of more than one shade of meaning, that interpretation will be adopted which the context in which it is found, the business to which it relates, and the circumstances in which it is used, disclose that the parties intended it to have, giving due weight to the purpose to be attained. • • •"

And in *Price, et al.* v. *Stonega Coke & Coal Co., et al.* (S. D.—W. Va.), 26 F. Supp. 172, 178, the court said:

> "• • • Where a contract is made for the accomplishment of one main purpose, every provision must be read in the light of such provision. • • •"

See also: *Restatement, Contracts*, Sec. 236 (b); *III Williston on Contracts (Revised Edition)*, Sec. 619; *Page I, Supplement to the Law of Contracts*, Sec. 2039; *Southern Ry. Co.* v. *Stearns Bros.* (C. C. A.—4th), 28 F. (2d) 560, 562; *Cities Service Gas Co.* v. *Kelby-Dempsey & Co.* (C. C. A.—10th), 111 F. (2d) 247, 249; *Hull* v. *Magnolia*

Petroleum Co. (C. C. A.—5th), 119 F. (2d) 123, 125; *United States* v. *D. L. Taylor Co.* (E. D.—N. C.), 268 F. 635, 639.

Under the foregoing principles it is clear that the construction placed upon carrier equalization agreements, like that here involved, by the Interstate Commerce Commission, the Comptroller General and, until the decision in the instant case, by the court below, is the correct one. The admitted purpose of petitioner's Equalization Agreement being to secure competitive traffic, i. e., traffic which, in the absence of the agreement, might move over competing land-grant routes, it must be construed so as to give effect to that purpose. And when that is done, it is plain that petitioner is not required to equalize rates computed via the routes relied upon by respondent, all of which are unduly circuitous, unreasonable and impractical, and are not such as would actually be used by respondent in the absence of the Equalization Agreement.

IV.

The language of the equalization agreement standing alone, when fairly and reasonably construed, does not require petitioner to equalize rates computed via routes relied upon by respondent for rate-making purposes, the word "available" being used in said agreement in a restrictive, as distinguished from a broad or extensive sense.

We have already demonstrated that the word "available" is used in petitioner's Equalization Agreement in a restrictive, rather than in a broad and extensive sense. That is very clear, indeed, when the term is considered in the light of the admitted purpose of the agreement. But we do not rely alone upon that rule of construction to establish the proper interpretation of the contract. The same result follows when the language of the agreement is analyzed and

considered from the standpoint of reason and common sense.

As heretofore stated, the word "available" is occasionally given a broad signification. In that sense it means "at one's disposal," and as applied to the facts of this case by the court below, an "available" rate is any rate that might *apply*, all such rates being at respondent's disposal, but regardless of circumstances. On the other hand, the word "available" is generally used in a more restricted sense, meaning "capable of being employed or made use of *with advantage*".

In these circumstances we must be guided by the principle laid down by this Court as long ago as *Church* v. *Hubbart*, 2 Cranch 165, 172. There it is said:

> "• • • and wherever words admit of a more extensive or more restricted signification, they must be taken in that sense which is required by the subject matter, and which will best effectuate what it is reasonable to suppose was the real intention of the parties."

Bearing this principle in mind, let us examine closely the language of the Equalization Agreement. It provides, in substance, that petitioner agrees to accept for the transportation of Government property entitled to reduced rates over land-grant roads "the lowest net rates lawfully *available*, as derived through deductions account of land-grant distance from the lawful rates filed with the Interstate Commerce Commission *applying* from point of origin to destination at time of movement."

To construe the word "available" to mean "at one's disposal", so that an available rate is any rate that lawfully applies and could possibly be used, is really to give it no meaning at all. For in that sense the word "available" is synonymous with the word "applying," and one

or the other might as well have been omitted from the contract. Indeed, at one point in its discussion of the contract, the court did omit the word "applying," saying: "Which (route) shall be chosen if we depart from the clear and definite language of the Equalization Agreement which gives the Government 'the lowest net rates lawfully available * * * from point of origin to destination at time of movement.'" This language is significant, and plainly shows that the court regarded the word "available" as being synonymous with the word "applying." In doing so, it violated the elementary principle of construction that, in construing a written contract, "an instrument should be interpreted by the context so as, if possible, to give a *sensible meaning and effect to all its provisions;* and so as to avoid rendering portions of it contradictory *and inoperative,* by giving effect to some clauses to the exclusion of others." *Ladd* v. *Ladd,* 8 Howard 10, 28; *Green County, Ky.* v. *Quinlan,* 211 U. S. 582, 594.

Every word in a written instrument is presumed to have been used advisedly, and in the instant case it is apparent, from what we have just said, that the word "available" was inserted for a limiting or qualifying purpose; otherwise, there would have been no reason to use it in addition to the word "applying."

The case of *Hamilton* v. *Menominee Falls Quarry Co.,* 106 Wis. 352, 81 N. W. 876, 887, illustrates the restricted use of the word "available." There the question was whether there had been a fraudulent transfer of certain properties, and it was necessary to determine what was meant by the term "available assets." On this point the court said:

> "* * * The word 'available' must have been inserted for some *limiting or qualifying purpose.* It must have been intended as including certain assets and excluding others, else there was no reason for its use. *The ordinary meaning* of 'available' is 'usable, capable

> of being used *to advantage'*; and we suppose when the word qualifies assets, as here, it must mean property that can be sold, or turned into cash with which to pay debts within a reasonable time. * * *". (At p. 878 of 81 N. W.)

The word "available" is used in the Equalization Agreement in the same restricted sense as in the above case. It must have been intended to include certain rates and to exclude others. Giving the term its ordinary meaning of "capable of being used *to advantage,*" it clearly excludes respondent's rates, as they could not have been so used.

Another case in which the word "available" is held to have been used in a restrictive sense is *Bay City Dredge Works* v. *Fox,* 245 Mich. 523, 222 N. W. 747, 748. There the plaintiff, holder of certain drain orders, demanded that they be paid out of the general funds in the County Treasury, the drain fund itself being deficient. Plaintiff based his right to be paid out of the general funds on a statute providing that drain orders may be paid out of "any moneys in the general fund of the County Treasury that may be available." The court denied recovery, saying:

> "* * * The term 'available' is employed in a *restrictive sense,* and opens the fund for the purpose of drain orders *only in case the moneys on hand are capable of use for such purpose,* and this requires consideration of the nature and extent of the fund and present and prospective demands upon the same for ordinary current county expenses.
>
> "The record discloses that the moneys in the fund are not capable of being used to accomplish the purpose sought by plaintiff. The statute states and intends that drain orders be paid out of any moneys in the general fund of the county treasury that may be available, *and that means out of moneys capable for use for such purpose,* and does not mean payment out of any moneys in the treasury whatsoever, regardless

of ordinary current county needs and expenses." (At p. 748 of 222 N. W.)

The statute in the above case provided that drain orders could be paid from any moneys in the County Treasury that might be "available," but the court held that plaintiff's drain orders were not entitled to be paid out of any moneys in the treasury whatsoever, regardless of the ordinary current county expenses.

In the instant case the Equalization Agreement provides that petitioner will equalize the lowest net rate lawfully "available," but this does not mean that respondent has the right to use any rate that might apply, regardless of circumstances.

Mineral Park Land Co. v. *Howard, et al.*, 172 Cal. 289, 156 Pac. 458, 459, is a pertinent and interesting case. There the defendant contracted to take from plaintiff's land all gravel needed for certain construction work. He actually took only about one-half of what was needed, and obtained the remainder elsewhere, because the gravel left on plaintiff's land was under water and not obtainable, except at great effort and expense. Suit was brought to recover the contract price of the gravel not taken. The trial court found that the defendant had taken all "available" gravel, using the word to mean "capable of being taken and *used advantageously*," but granted recovery on the theory that it was not impossible for defendant to perform his contract. While the State Supreme Court reversed the trial court, holding that the parties had assumed that the land contained the requisite quantity of gravel available for use, it, in effect, affirmed the trial court's interpretation of the word "available," saying:

"* * * And, in determining whether the earth and gravel were 'available,' we must view *the conditions in a practical and reasonable way.* Although there was

gravel on the land, it was so situated that the defendants could not take it by *ordinary means, nor except at a prohibitive cost.* * * *" (At pp. 459-460 of 156 Pac.)

Big Vein Pocahontas Co. v. *Browning, et al.*, 137 Va. 34, 120 S. E. 247, 253, is to the same effect. There the question before the court was the proper interpretation of the word "available," as used in a mining lease under which the Pocahontas Company had agreed, among other things, to mine all "available" coal. The court said:

> "Under the terms of the lease fairly and reasonably construed, 'available' coal includes all coal recoverable as a *practical and reasonable mining proposition, considering actual conditions, cost, and all the surrounding circumstances.*"
>
> (At page 253 of 120 S. E.)

As it would have been unreasonable in the *Howard Case* to require defendant to pay for gravel which could not be taken from plaintiff's land except at prohibitive cost, and as it would have been unreasonable in the *Browning* case to require the mining company to mine coal which could not be recovered as a practical mining proposition, so in the instant case it would be unreasonable to require petitioner to equalize rates applying via routes which could not be used by respondent as a practical matter.

We submit that the language of the Equalization Agreement, fairly and reasonably construed, does not require petitioner to equalize rates computed via the routes here relied on by respondent, all of which are unreasonable and impractical, and would never, in fact, be used.

For additional authorities to the same effect as the foregoing, see: *Starling Realty Corp.* v. *State*, 174 Misc. 375, 20 N. Y. S. (2d) 878, 883, aff'd 286 N. Y. 272, 36 N. E. (2d) 201; *Woodley Petroleum Co.* v. *Arkansas-Louisiana Pipe*

Line Co., 179 La. 136, 153 So. 539; *Flavelle, et al.* v. *Red Jacket Consol. Coal & Coke Co.*, 82 W. Va. 295, 96 S. E. 600, 605; *William C. Atwater & Co., Inc.*, v. *Fall River Pocahontas Collieries Co., et al.*, 119 W. Va. 549, 195 S. E. 99, 102.

V.

The equalization agreement being susceptible of more than one interpretation, it will be given a reasonable, as opposed to an unreasonable, construction, and an interpretation requiring petitioner to equalize net rates computed via the routes used by respondent for rate-making purposes would be so unfair, unreasonable and absurd that it will not be adopted.

We have shown that, while the Equalization Agreement is susceptible of more than one interpretation, there is no doubt as to its true meaning and intent when viewed in the light of its purpose, or when the words of the contract themselves, together with the surrounding circumstances, are considered in a reasonable and practicable way. We have established, we submit, that the word "available" is used in the Equalization Agreement in a restrictive sense and that, properly construed, the contract requires petitioner to equalize rates computed by *competitive* land-grant routes, i. e., routes over which the traffic might normally move in the absence of the agreement. The only other possible interpretation is that adopted by the court below, which is, in effect, that the word "available" is used in the Equalization Agreement in a broad or extensive sense, and that an "available" rate, within the meaning of the agreement, is any rate which might happen to apply, and hence be at the disposal of respondent. Under this interpretation, petitioner is required to equalize rates applying via the route in fact producing the lowest net rate, regardless of how circuitous, unreasonable and impractical such route may

be. We now propose to show that this interpretation of the Equalization Agreement is so unfair and unreasonable, and leads to such absurd results, that it will not be adopted here.

It is a familiar rule of law that, where a contract is susceptible of more than one interpretation, it will be given a reasonable, rather than an unreasonable, construction, and in such cases the purpose of a contract bears very strongly upon the question of the reasonableness or the unreasonableness of a particular construction. This rule is so firmly established that we will refer in the briefest way to the authorities.

In *The Aetna Insurance Co.* v. *William C. Boon*, 95 U. S. 117, 128, the court was construing a contract of insurance, and in the course of the opinion, said:

> "Policies of insurance, like other contracts, must receive a reasonable interpretation consonant with the apparent object and plain intent of the parties."

And in *Richardson* v. *Western Oil, Coal & Investment Co.* (C. C. A., 8th) 3 F. (2d) 403, 407, the court, after reaching the conclusion that the contract before it was clear, went on to say:

> "Even if the terms of the contract sued on were not plain, the contentions of appellees could not be sustained. To do so would give to the contract an unfair and unreasonable interpretation and be in contravention of the clear purpose and manifest intention of the parties."

Likewise, in *Phillips Petroleum Co.* v. *Gable* (C. C. A., 10th) 128 F. (2d) 943, 944-945, the court said:

> "Where a contract is fairly susceptible of two constructions, one of which makes it fair and customary and such as prudent men would naturally execute, and the other makes it unusual or such as reasonable men

> would not be likely to enter into, the interpretation which makes it a rational and probable agreement must be preferred."

We might add here that, as shown in the accompanying petition, the court below, in its decision in the *Louisville & Nashville Case*, applied the foregoing rule to an equalization agreement reading like that here involved, holding that, "if uncertain in its application and in the absence of a specific showing as to its applicability, a reasonable construction must prevail."

The state courts apply the same rule. For example, in *Anderson* v. *Aetna Life Ins. Co.*, 75 N. H. 375, 74 Atl. 1051, 1053, the court said:

> "As men in general do not enter into contracts that are absurd or frivolous, or understandingly include in a written contract *stipulations tending to defeat its main purpose*, the inconvenience, hardship or absurdity of one construction *or its contradiction of the general purpose of the contract*, is weighty evidence that such meaning was not intended, when the language is open to a construction which is neither absurd nor frivolous, *and is in agreement with the general purpose of the parties.*" (At p. 1053 of 74 Atl.)

For additional authorities see: III *Williston on Contracts* (Rev. Ed.) *Section 620;* 12 *Am. Jur.* pp. 791-793; *Foye Lumber Co.* v. *Pennsylvania R. Co.* (C. C. A.—8th) 10 F. (2d) 437; *United States* v. *Skinner & Eddy Corp.* (W. D.—Wash.) 28 F. (2d) 373; *Sun Oil Co.* v. *Dalzell Towing Co.* (C. C. A.— 2d) 55 F. (2d) 63; *Champlin* v. *Commissioner of Internal Revenue* (C. C. A.—10th) 71 F. (2d) 23; *United States* v. *I. B. Miller, Inc.*, (C. C. A.—2d) 81 F. (2d) 8.

When we apply the principles announced in the foregoing cases to the facts of this case, it is plain that the construction of the contract for which we contend is sound,

and that adopted by the court below utterly without merit.

At the risk of repetition, we restate briefly the conflicting views. Petitioner's contention is that under the Equalization Agreement it is required to equalize rates computed via *competitive* land-grant routes only; i. e., routes over which the traffic might normally move in the absence of the agreement. Respondent, on the other hand, contended, and the court below held, that under the agreement, petitioner is bound to equalize rates computed via the route in fact producing the lowest net rate, regardless of whether such route is competitive, i. e., regardless of whether such route is, or is not, one over which the traffic might normally move in the absence of the agreement, and regardless of how unreasonable and impracticable it may be.

It ought to be said here that *on all shipments* covered by the first cause of action, petitioner, in accordance with its interpretation of the Equalization Agreement, conceded respondent the benefit of land-grant deductions as far south as Cairo, Illinois, upon the ground that the land-grant routes to that point were reasonable, practicable and competitive. But beyond Cairo, petitioner refused to allow deductions account of land-grant distances, and computed the rate from that point to destinations via a direct, non-land-grant route, contending that respondent's routes south of Cairo were impractical and non-competitive and such as would never have been used by respondent if the Equalization Agreement had not been in effect. *Respondent's sole answer was that the routes used produced the lowest net rates.* That is the only test it recognized, *and it is the only test recognized by the decision of the court below.*

Applying that test to the facts of this case, the result is so unreasonable and absurd that it must be rejected. We again refer to the accompanying petition for a full statement of the facts. We need here only state that the findings below show that, had the respondent actually used the

rates and routes relied upon in the first cause of action, the resultant costs in *accessorial* charges would have exceeded in a large number of cases the savings which might have been effected in *transportation* charges, and in all other instances would have sharply reduced such savings. Additionally, the already debilitated livestock would have been confined to the stock cars a *minimum* of three additional days, and would have been exposed to great risk of death or injury while traveling the several hundred miles by which respondent's routes exceeded the routes of actual movement. Under these circumstances it is certain that respondent would not have used the rates and routes here relied on, and if that be true, the unreasonableness of the construction of the Equalization Agreement adopted by the court below, which requires petitioner to equalize such rates, is so great as to shock the conscience.

Why, may we ask, would petitioner, or any other railroad, agree to equalize rates computed via routes which, whatever the cause, would *never, in fact, be used for the actual movement of Government traffic?* If such traffic would not actually move over the cheapest land-grant route, if there were no Equalization Agreement, why should petitioner enter into a contract to equalize the rate computed via such route? The answer, of course, is that there would be no purpose at all in doing so, and a contract which requires it would be inane and senseless to the last degree. There is certainly nothing in the language of petitioner's Equalization Agreement that compels the construction put upon it by the court below. We submit that such interpretation is so unreasonable and leads to such absurd results that it ought not to be adopted by this Court.

The language of the court in *Nicholson Transit Co.* v. *Nicholson Universal S. C. Co.* (E. D.—Mich.) 43 F. (2d)

427, 432, aff'd 60 F. (2d) 90, is particularly applicable here. There the underwriters on a charter party between libelant and respondent sued in libellant's name to recover from respondent certain sums it had paid on insurance policies, urging an unreasonable and absurd construction of the agreement between libelant and respondent. The court refused to adopt this interpretation of the contract, saying:

> "* * * but a court should be reluctant to interpret a contract in a way that would make it an unreasonable, unnatural, and absurd bargain unless the plain meaning of the contract requires such an interpretation.
>
> "*The interpretation of this agreement urged by libelant would lead to the conclusion that the contracting parties were either stupid or mistaken.* The interpretation contended for by respondent would simply make them ordinarily intelligent and careful. * * *"

And after pointing out the absurdity of the interpretation urged by the underwriters, the court said:

> "* * * The court ought not to interpret the charter in such a way unless it is made necessary by the plain language of the contract. *It would be such an unreasonable bargain for intelligent men to make that, if the language of the charter permits, the court ought to interpret it in the way that reasonable men would think and would act.* While the burden of this defense rests upon the respondent, it seems to me that when it comes to a contention of that kind *common sense creates a presumption.*"

The construction placed upon the Equalization Agreement by the court below makes it such an unreasonable, unnatural and absurd bargain as to lead to the conclusion that petitioner was either stupid or mistaken. We submit that

common sense creates a presumption against such stupidity or mistake and against the making of such a silly contract.

As said by this Court in *The Kronprinzessin Cecilie*, 244 U. S. 12, 24:

> "Business contracts must be construed with business sense, as they naturally would be understood by intelligent men of affairs."

The Equalization Agreement is a "business contract," and a very vital one, but we must say, with great deference, that it has not been construed by the court below "with business sense." Certainly no business man of ordinary intelligence would enter into an equalization agreement which required the equalization of rates via routes which would not, in the absence of such an agreement, be used for the actual movement of freight.

All that has been said applies with equal force to the shipments covered by the second cause of action. Routes there used by petitioner for rate-making purposes are not used for the movement of commercial traffic, and are so circuitous and unnatural they would never, by any reasonable standard, be used for actual shipments in the absence of the Equalization Agreement. Hence, by no reasonable construction could that agreement be held to apply.

The court below recognized the unfair and unreasonable construction placed by it upon petitioner's Equalization Agreement, but seemed to be of the opinion that it could not give any weight to such circumstance in arriving at the proper interpretation of the contract. In this connection, the court said:

> "* * * Any question as to whether it is unfair and unreasonable to require plaintiff to equalize net charges computed at lawful tariff rates via the land-grant routes used by defendant is foreclosed by the tariffs lawfully

on file with the Interstate Commerce Commission. *The question of reasonableness of tariff rates and routes is one over which this court has no jurisdiction.* It has been committed by Congress to the Interstate Commerce Commission." (R. 46).

We contended in the court below, as we do here, that the Equalization Agreement must be given a reasonable, as opposed to an unreasonable, construction, and that an interpretation which required petitioner to equalize rates computed via the routes relied upon by respondent would be so unfair and unreasonable that it would not be adopted. It is plain from the foregoing excerpt from the opinion below that the court entirely misconceived the issue raised by that contention. We concede, of course, that the Interstate Commerce Commission has exclusive jurisdiction over the reasonableness of rates, but no such question is here raised. When we say that it would be unfair and unreasonable in the extreme to construe the Equalization Agreement to require petitioner to equalize the rates relied upon here by respondent, the question raised is one of *contract law*, pure and simple. The sole question is not whether any particular rate is a reasonable rate or not, but whether, under the terms of the Equalization Agreement (providing for reduced rates on Government property, as permitted by Sec. 22 of the Interstate Commerce Act, 49 U. S. C., Sec. 22) petitioner is required to equalize a particular rate. The rates to be charged respondent, whatever they are, are *contractual* rates expressly permitted by the Act, and in determining what the *proper contract rate* is, no question within the jurisdiction of the Commission is involved.

Conclusion.

For the reasons assigned in the petition for certiorari, and in this brief, we respectfully submit, that the writ of

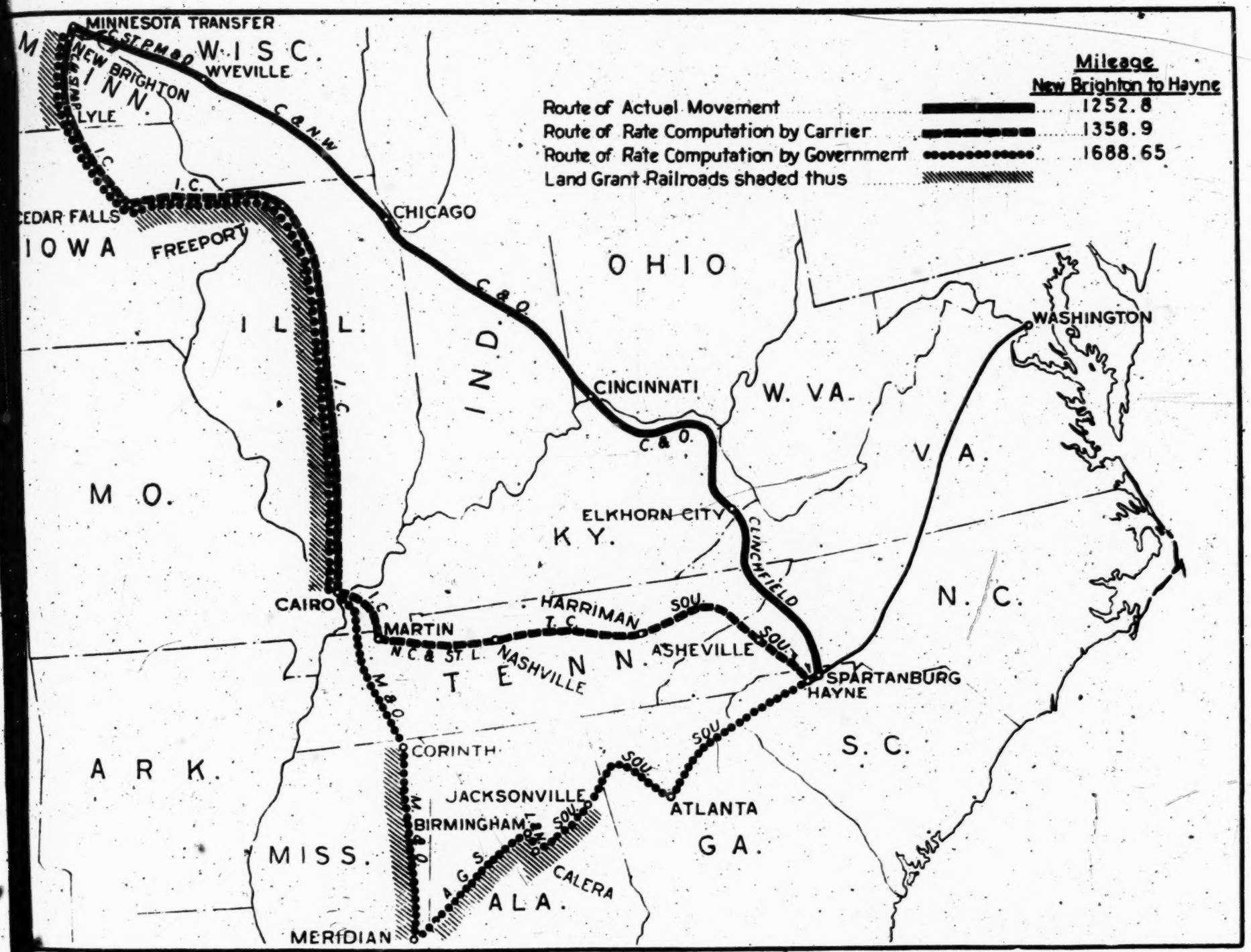
certiorari should be granted, and that, after full consideration of this Court, the judgment and decision of the Court of Claims of the United States herein should be reversed.

Respectfully submitted,

SIDNEY S. ALDERMAN,
SEDDON G. BOXLEY,
Attorneys for Petitioner,
Southern Railway Company.

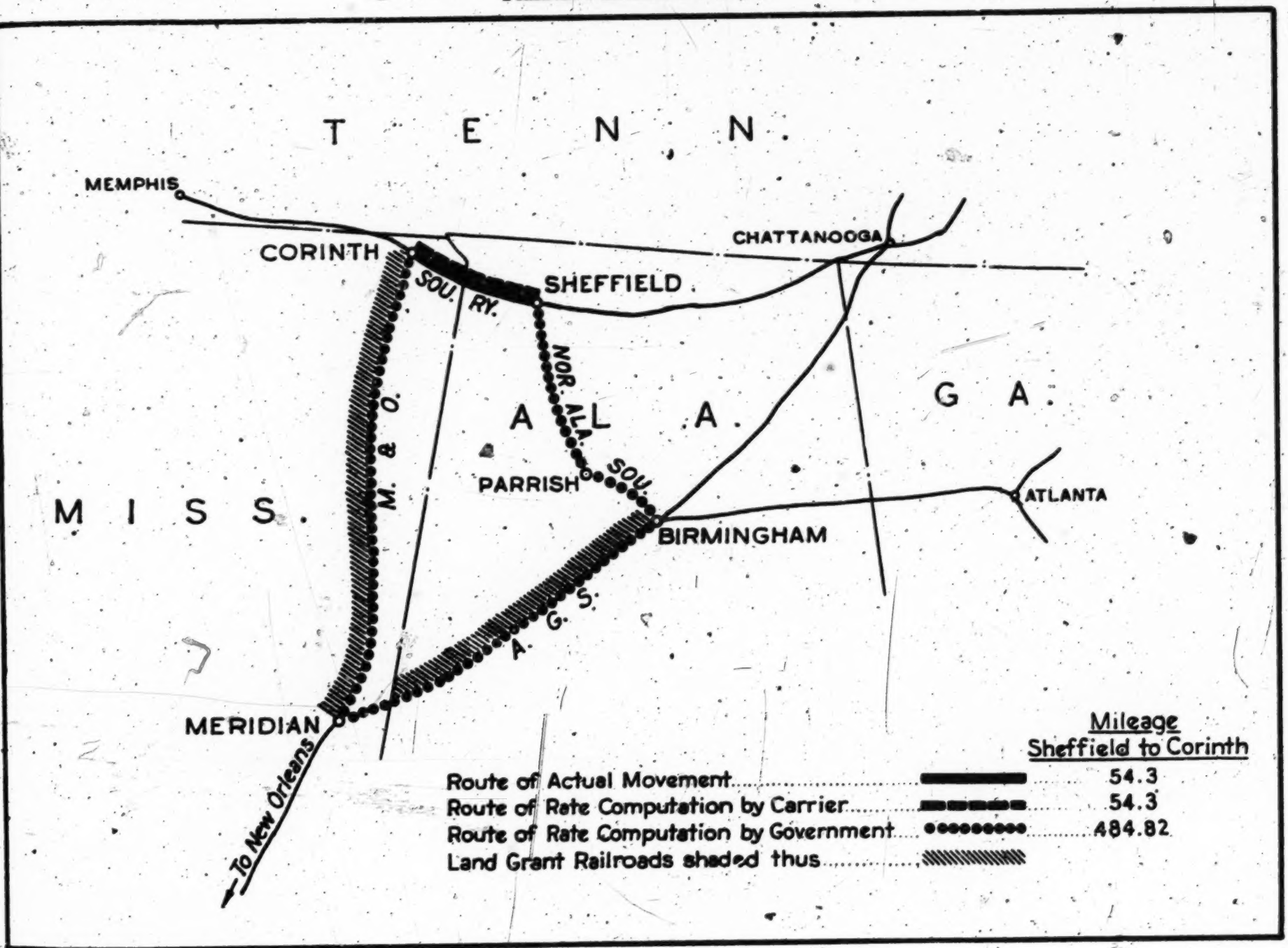
S. R. PRINCE,
Of Counsel.

Plaintiff's Exhibit No. 22.



APPENDIX III.

Plaintiff's Exhibit No. 35(a).



APPENDIX II.

Plaintiff's Exhibit No. 26.

As to the Seaboard agreement, the court said:

> "If the agreement of the Seaboard Air Line Railway as set out in Finding IV is controlling, equalization with the Chicago-Cairo route was unauthorized because not a 'usually traveled route' between points of origin and destination." (p. 10)

As to the agreement participated in generally by the railroads, including plaintiff and the Seaboard, and which reads exactly like ours, the court said:

> "The equalizing agreement participated in generally by the railroads, quoted from in Finding IV and found in full in the Manual of the Quartermaster Corps, volume 2, page 223, makes different provisions as to passenger and freight transportation and, *as to the latter, does not contain the words 'usually traveled route.'* It is for construction if uncertain in its application and, in the absence of a specific showing as to its applicability, a reasonable construction must prevail." (p. 10.)
>
> • • • •
>
> "The use of this route for equalization purposes in the absence of a showing does not appeal. *It is excessive in its roundabout character and increased mileage.* The defendant, upon this question and to sustain its contention, furnishes the testimony of a witness whose theory is that when a railroad company signs an equalization agreement, it agrees to equalize 'with any kind of a route you can imagine or construct.' *Such a view can not be accepted. It is unreasonable.*" (p. 11.)

The conflict between that case and the decision below in our case is direct and inescapable.

Respectfully submitted,

SIDNEY S. ALDERMAN,
SEDDON G. BOXLEY,
Attorneys for Petitioner.

S. R. PRINCE,
Of Counsel.

FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

No. 578.

SOUTHERN RAILWAY COMPANY, *Petitioner*,

v.

THE UNITED STATES.

On Petition for a Writ of Certiorari to the Court of Claims.

REPLY BRIEF FOR PETITIONER.

SIDNEY S. ALDERMAN,
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Attorneys for Petitioner.

S. R. PRINCE,
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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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REPLY BRIEF FOR PETITIONER.

STATEMENT.

The brief for the United States in opposition to certiorari is lacking in the candor to be expected of a brief for the Government. It misstates the question presented. It misstates the contention of petitioner. And it misstates the holding by the Court of Claims in *Louisville & Nashville R. R. Co.* v. *The United States*, 61 C. Cls. 1.

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THE QUESTION PRESENTED.

The Government's brief (p. 2), instead of stating the question presented, makes a statement which begs the very question to be decided. It says:

> Whether the court below properly held that under the Freight Land-Grant Equalization Agreement between the United States and petitioner the rates chargeable for transportation of government property were the *lowest net rates lawfully available*[1] between origin and destination over land-aided routes, even though such routes were not as short as the actual routes used for the transportation.

The Equalization Agreement itself requires petitioner to equalize the "lowest net rate lawfully available" between origin and destination. This case involves the question as to what were the lowest net rates lawfully available under the facts here presented. To beg that question is not to state the question presented.

The precise question presented is this: Under the Equalization Agreement is petitioner required to equalize net rates computed via non-competitive land-grant routes, no matter how circuitous and unavailable for actual movement of government traffic, or does "lawfully available" mean only such land-grant routes as might normally be available to and used by the Government in the absence of the agreement?

PETITIONER'S CONTENTION.

The Government's brief purports to state petitioner's contention thus (pp. 6-7):

> Petitioner contends, however, as it did below, that the Equalization Agreement only required it to equalize net freight rates computed via land-grant routes, "which are in fact competitive *in the ordinary commercial sense*," and not via the available "land-grant route

[1] All italics ours.

> from point of origin to destination in fact producing the lowest net rate, regardless of whether such route is in fact *commercially* competitive and regardless of how circuitous and impractical it may be."

That is not a fair statement of petitioner's contention. The italicized language is not our language. It is taken from an inaccurate statement in the opinion below.

Petitioner has nowhere contended that it is only required to equalize net freight rates computed via land-grant routes "which are in fact competitive in the ordinary commercial sense." Such a contention would be obviously unsound. There may well be routes not considered competitive by commercial shippers but which might actually be used by the Government to avail of land-grant.

Our contention is that petitioner is only required to equalize net rates computed via routes which are competitive for Government traffic; that is, over which Government traffic might normally move in the absence of the Equalization Agreement (Petition, p. 3; Brief, pp. 30, 47).

No question of competition "in the ordinary commercial sense" is involved. Such competition has no pertinence to the problem.

THE HOLDING IN THE LOUISVILLE & NASHVILLE CASE.

It does not aid proper disposition of the petition and of the question presented, for the Government to misstate, as it does in the footnote on pages 10 and 11 of its brief, the holding in *Louisville & Nashville R. R. Co.* v. *The United States*, 61 C. Cls. 1.

Only one of the two agreements passed on in that case, the Seaboard agreement, contained the limitation to the "usually traveled route." The other, the equalizing agreement participated in generally by the railroads, did not contain the words "usually traveled route," as the Court of Claims plainly stated at page 10 of its opinion.

In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 578

SOUTHERN RAILWAY COMPANY, PETITIONER

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The special findings of fact, conclusion of law, and opinion of the Court of Claims (R. 25–47) are not yet officially reported.

JURISDICTION

The judgment of the Court of Claims was entered on October 4, 1943 (R. 47). The petition for a writ of certiorari was filed on January 4, 1944. The jurisdiction of this Court is invoked under Section 3 (b) of the Act of February 13, 1925, as amended by the Act of May 22, 1939.

QUESTION PRESENTED

Whether the court below properly held that under the Freight Land-Grant Equalization Agreement between the United States and petitioner the rates chargeable for transportation of government property were the lowest net rates lawfully available between origin and destination over land-aided routes, even though such routes were not as short as the actual routes used for the transportation.

STATEMENT

The action in the Court of Claims was brought by petitioner to recover a balance alleged to be due on account of the transportation of freight for the United States, and the United States counterclaimed for alleged overpayments; both claims were decided for the Government upon the basis of a "Freight Land-Grant Equalization Agreement" between the parties.

To aid in the construction of railroads in the United States, the Government has granted land routes to many railroads upon condition that they furnish transportation to the Government at reduced rates (R. 74A; cf. *Southern Pacific Co.* v. *United States*, 307 U. S. 393); such railroads are known as "land-grant lines." Since it is the policy of the Government not to use non-land-grant lines where land-grant lines are available (22 Comp. Dec. 129, 130), numerous non-land-grant roads, in order to secure government busi-

ness, have entered into so-called equalization agreements under which they agree to accept the same rates over their lines as apply over the land-grant lines." These railroads are called "equalizing lines."

The facts in this case are stipulated (R. 55–74) and are as follows: On November 29, 1933, petitioner, Southern Railway Company, a non-land-grant railroad engaged in the carrying of freight and passengers in interstate and intrastate commerce (R. 55), entered into a "Freight-Land-Grant Equalization Agreement" with the United States under which petitioner agreed, subject to certain conditions not here pertinent (R. 55–56, 75)—

> to accept for the transportation of property shipped for account of the Government of the United States and for which the Government of the United States is lawfully entitled to reduced rates over land-grant roads, the lowest net rates lawfully available, as derived through deduction account of land-grant distance from the lawful rates filed with the Interstate Commerce Commission applying from point of origin to destination at time of movement.

Between 1934 and 1938, while this Agreement was in effect, the Federal Surplus Relief Corporation, an authorized agent of the United States, made shipments of livestock, property of the

United States, over petitioner's lines from midwest points to southeastern points (R. 56), and the Tennessee Valley Authority, also an authorized agent of the United States, made shipments of various kinds of Government property over petitioner's lines from and to south-central and southeastern points in the United States (R. 61, 22c).

All such transportation was over non-land-grant lines, and recognizing that under the Equalization Agreement the Government was to be charged no more than the equivalent land-grant rates for the transportation in question, petitioner allowed the United States deductions to which it would have been entitled had it shipped over a somewhat longer route between the origin and destination points which comprise certain land-grant mileage and which petitioner claimed was commercially competitive with the routes actually used (R. 57–72). However, the Government claimed deductions applicable to a still longer route between these points, comprising greater land-grant mileage. The pertinent tariffs on file with the Interstate Commerce Commission and applicable to commercial shipments between these points were the same regardless of mileage and whichever of these three routes was used (the actual route over petitioner's lines; the longer, partially land-grant, route selected by petitioner for equalization computations; and the still longer, partially land-grant, route selected by the Government for such computations); and peti-

tioner as well as the carriers using the other routes were parties to that tariff (R. 57–58, 62–65, 67, 69, 71).

The Government paid the rates computed on the basis of the third route, and petitioner brought suit in the Court of Claims for the difference between that amount and the amount due according to its calculations.[1] The United States counterclaimed for an alleged overpayment of $1,251.73 (R. 42, 46). The court below denied recovery to petitioner and entered judgment on the counterclaim for the Government (R. 47).

ARGUMENT

The proper charges for the transportation in question admittedly depend upon the construction to be given the Equalization Agreement. In it, petitioner agreed "to accept for the transportation of property shipped for account of the Government * * * and for which the Government * * * is lawfully entitled to reduced rates over land-grant roads, the lowest net rates lawfully available." Moreover, the Agreement states that

[1] For transportation of the Federal Surplus Relief Corporation livestock, petitioner claimed a balance of $9,896.90, subsequently reduced to $9,512.22 by abandonment of certain items (R. 28–29). For transportation of the TVA freight, petitioner claimed a balance of $1,517.21, which petitioner subsequently reduced to $1,043.14 by abandoning some items (R. 35–36). A third cause of action on account of certain shipments alleged to have been billed improperly (R. 41) was subsequently settled by stipulation (R. 74, 43).

such rates are to be "derived" through deductions on account of "land-grant distance" from the lawful rates filed with the Interstate Commerce Commission "applying from point of origin to destination". (R. 56.) It is not denied that the Government would have been "lawfully entitled to reduced rates" if it had actually shipped the merchandise "over land-grant roads" from origin to destination via the route selected by it for computing equalization; that such reduced rates would be the regular tariff rates filed with the Interstate Commerce Commission for such a haul, less deductions on account of the land-grant mileage included within the route; and that the rates paid by the Government to petitioner (less the judgment on the counterclaim) were correctly computed if the route selected by the Government was properly used for computation. Indeed, the record reveals (R. 51–55, 58, 71) and the court below found (R. 44) that the land-grant routes selected by the Government as a basis for equalization were "admittedly" equally "available to the commercial public and to the government and could have been used for the making of all of the shipments in question."

Petitioner contends, however, as it did below, that the Equalization Agreement only required it to equalize net freight rates computed via land-grant routes "which are in fact competitive in the ordinary commercial sense," and not via the available "land-grant route from point of origin to

destination in fact producing the lowest net rate, regardless of whether such route is in fact commercially competitive and regardless of how circuitous and impractical it may be" (R. 43; Pet. 30). Conceding that no express language in the Agreement compels this construction, petitioner seeks to have it reached on the ground that the Agreement is "ambiguous" (Pet. 19). The Court of Claims correctly rejected this contention.

1. Because it "is the policy of the Government not to use" non-land-grant lines "when the land-grant or equalization lines are available" (22 Comp. Dec. 129, 130), "non-land-grant roads have entered widely into freight land-grant equalization agreements" for the purpose of obtaining "a share of government traffic." *Southern Pacific Co.* v. *United States*, 307 U. S. 393, 394, fn. 1; see also 17 Comp. Dec. 979, 982; 20 Comp. Dec. 167, 169. The true purpose of an equalization agreement is thus to give the Government the benefit, in shipments over an equalizing road, of the land-grant rates available between the same points; and this objective requires that the land-grant route resulting in the lowest net rate be selected for computing equalization.

Petitioner's argument that the purpose of the Agreement was to secure for it "traffic which, in the absence of the agreement, would be likely to move over competing land-grant routes" (Pet. 30) ignores the obvious fact that competitiveness for

commercial purposes is not the same as for governmental purposes. As the court below pointed out, in "the transportation of government property the competition for it is between the non-land-grant or equalization carriers," but "a route which is competitive for commercial traffic may or may not be competitive for government traffic which is subject to reduced rates over lawfully available land-grant routes." A land-grant route over which the Government might ship its property in order to take advantage of lower rates may not be "a practical route over which commercial shippers not entitled to freight rate reductions ordinarily would elect to make their shipments." (R. 44; see 21 Comp. Dec. 744, 745.) Accordingly, the court below correctly found that the Equalization Agreement "was designed to give the equalizing carrier a portion of the Government business that was possible of routing over the governing land-grant route" and "to give the Government a greater range in choice of routes where considerations of economy entered into the selection" (R. 27).[2]

[2] This policy is reflected in the Regulations of the Quartermaster General, U. S. Army (issued in 1916, and effective at the time the agreement in question was entered into), which provide that if carriers "will not equalize the lowest net rates available on certain specified traffic, such traffic should not be forwarded via the carriers shown, unless no other route is available. Where special exceptions provide that the lowest available rate will not be protected via certain routes, such routes should not be used" (R. 45).

Reasons of policy support the literal construction of the Agreement. To require the selection, as a basis for equalization, of any route other than that yielding the "lowest net rates lawfully available" as a result of land-grant deductions from the lawful rates "applying from point of origin to destination" would, as the court below observed, lead to "uncertainty, confusion, and constant controversy" (R. 46). For then each movement of government property over equalization lines would require "a detailed and expert inquiry" (*ibid.*) as to which of all available land-grant routes running from point of origin to destination possessed the greatest degree of commercial competitiveness and hence was appropriate for equalization computations. These considerations should preclude any attempt to "import words into the contract which would make it materially different in a vital particular from what it now is" (*Gavinzel* v. *Crump*, 89 U. S. 308, 319).

2. Petitioner also contends that it is unreasonable to construe the Agreement as requiring equalization on the basis of available instead of competitive land-grant routes, since the former routes are often circuitous (Pet. 44). But it was stipulated below that the Equalization Agreement embodies no "excess mileage limitation" (R. 56). And, as the court below observed, "circuity routing is a well known factor in connection with transportation rates and is favored by carriers to secure traffic and by shippers to meet particular

situations," and these "matters were well known to the parties when the equalization agreement was made" (R. 44–45). See *In the Matter of Coal from and to Points in Alabama*, 238 I. C. C. 82, where carriers applied to the Commission to maintain rates over certain routes, some of which were 161.8 percent circuitous.

Certainly circuity and relative mileage were not recognized by the Interstate Commerce Commission as factors justifying any different charges for different routes between the same points. The pertinent tariffs between the origin and destination points here involved were identical whatever route was taken, whether one of the land-grant alternatives or petitioner's non-land-grant route (R. 59, 62–65, 67, 69, 71). And it is clear that the reasonableness of the rates on the "circuitous" routes authorized by tariffs lawfully on file with the Interstate Commerce Commission cannot be attacked in this proceeding, as petitioner indirectly seeks to do (Pet. 31, 44). *United States Navigation Co., Inc.* v. *Cunard S. S. Co.*, 284 U. S. 474, 481–483; *Great Northern Ry. Co.* v. *Merchants Elevator Co.*, 259 U. S. 285, 291.[3]

[3] Contrary to petitioner's contention (Pet. 11, 13, 33), the decision below does not conflict with other decisions of the Court of Claims. *Louisville & Nashville R. R. Co.* v. *United States*, 61 C. Cls. 1, concerned the construction of an equalization agreement which was expressly limited to the "usually travelled route." The court there refused to uphold equalization via a circuitous land-grant route solely because of this limitation and expressly disavowed any intention to approve

CONCLUSION

The decision below is clearly correct, and there is no conflict of decisions. It is respectfully submitted that the petition for a writ of certiorari should be denied.

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"the use of the route in question as an equalizing route to the extent of establishing a controlling precedent" (61 C. Cls. 1, 11).

The reference in *Northern Pacific Ry. Co.* v. *United States*, 72 C. Cls. 563, to "competing routes" as a basis for equalization does not at all necessarily refer to those routes which are competitive for commercial as distinguished from government traffic. It is clear that the competition involved in the shipment of property subject to land-grant rates is that between non-land-grant lines and land-grant lines. See *Increased Railway Rates, Fares, and Charges*, 248 I. C. C. 545.

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CITATIONS

In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 578

SOUTHERN RAILWAY COMPANY, PETITIONER

v.

THE UNITED STATES

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the Court of Claims (R. 42–47) is not yet officially reported.

JURISDICTION

The judgment of the Court of Claims was entered on October 4, 1943 (R. 47). The petition for a writ of certiorari was filed January 4, 1944, and granted March 6, 1944. The jurisdiction of this Court rests upon Section 3 (b) of the Act of February 13, 1925, as amended by the Act of May 22, 1939.

QUESTION PRESENTED

Whether the court below properly held that under the Freight Land-Grant Equalization

Agreement between the United States and petitioner, the Government was entitled, in computing the charges to be paid for the transportation of its property over petitioner's lines, to use the lowest net rates which the Government would have had to pay for the transportation of such property over land-grant routes between origin and destination, even though such routes were more circuitous than the actual routes used by petitioner for the transportation.

INTRODUCTION

To aid in the construction of railroads in the United States, Congress since 1850 has granted land for right-of-way to many railroads upon condition that they furnish transportation to the Government free of charge or at reduced rates (R. 74A; *Southern Pacific Co.* v *United States*, 307 U. S. 393, n. 1). Such railroads are known as "land-grant" lines; and since 1924 all such roads have been required to allow the Government, for transportation of Federal troops or property, deductions of 50% of the commercial rate, multiplied by the percentage of the route between the points of origin and destination which passes over granted land. Act of June 7, 1924 (43 Stat. 477, 486; 10 U. S. C. § 1375).[1] By section 321 of the

[1] A typical example illustrating the computation of a net land-grant rate for the movement of Government property over a land-aided route would be as follows: A shipment of first-class freight moves from Chicago, Ill., to Kansas City, Mo. The commercial rate is 80 cents per cwt. and the net

Transportation Act of 1940 (54 Stat. 898, 954) the 50% reduction was made applicable only to the movement of military or naval personnel and property.

Not all railroads, however, have received land grants.[2] Since it is the policy of the Government, often expressed in administrative regulations, to move Federal troops and property at the lowest available rates, it declines to use higher cost non-land-grant routes wherever reduced rates over land-grant routes are available. As a consequence of this policy non-land-grant roads were unable to obtain Government business wherever land-grant routes were available to the Government. In order to secure such business, numerous non-land-grant railroads entered into contracts with the United States whereby they agreed to accept Government shipments over their lines at the same rates as would be applicable to the shipments over land-grant routes. 22 Comp. Dec. 129, 130. These contracts are known as "land-grant equalization agreements," and the roads which are parties to such agreements are called

rate is established over the "A" R. R. from Chicago to Kansas City. The total distance is 500 miles, of which 150 miles (or 30%) is over a land-grant line. The deduction from the commercial rate would therefore be 50% x 30%, or 15%. The net rate, therefore, would be 80 cents minus 15% thereof, or 68 cents.

[2] The value of all of the Federal and State land grants has been variously estimated from $174,000,000 to $2,480,000,000. II *Public Aids to Transportation* (Office of Federal Coordinator of Transportation, 1938), p. 33.

"equalizing" lines. And since the amount of a land-grant reduction varies with the percentage of land-grant comprised within the route (see n. 1 *supra*), roads having only part of their lines over granted lands have in many instances also entered into equalization agreements for the purpose of meeting the reductions available over lines serving the same points but having greater amounts of land-grant and hence lower net rates. *Public Aids to Transportation, supra,* n. 2, at p. 42; 22 Comp. Dec. 129, 130.

Today practically all railroads, both land-grant and otherwise, are parties to rate-equalization agreements covering the movement of Government troops and property.[3]

STATEMENT

The facts in this case were stipulated (R. 55–74), and are as follows:

Petitioner, Southern Railway Company, a railroad whose route includes 145 miles of land-grant, is engaged in transporting freight and passengers in interstate and intrastate commerce (R. 1, 55). On November 29, 1933, petitioner entered into a "Freight-Land-Grant Equalization Agreement" with the United States under the authority of Section 22 of the Interstate Commerce Act (24 Stat.

[3] See *Freight Land-Grant Equalization Agreement together with List of Agreement Carriers*, Circular No. 3–B, March 1, 1941, War Department, Office of Quartermaster General, Washington.

387, 49 U. S. C. § 22). Petitioner agreed, with certain exceptions not here pertinent (R. 55–56),

> to accept for the transportation of property shipped for account of the Government of the United States and for which the Government of the United States is lawfully entitled, to reduced rates over land-grant roads, *the lowest net rates lawfully available,* as derived through deductions account of land-grant distance from the lawful rates filed with the Interstate Commerce Commission applying from point of origin to destination at time of movement. [Italics added.]

Between 1934 and 1938, while this agreement was in effect, authorized agents of the United States made 374 shipments of Government-owned property over petitioner's lines and its connections.[4] As to each shipment, there was available for use by the general public and the Government three or more different routes between point of origin and destination: Petitioner's non-land-grant route, generally the shortest; and two or more longer routes over other roads, containing land grants of varying percentages. The pertinent tariffs for freight shipments between these

[4] These consisted of 147 shipments of livestock by the Federal Surplus Relief Corporation in 1934 from midwest points to southeastern points (R. 56); and 227 shipments of various kinds of Government property by the Tennessee Valley Authority between 1934 and 1938, from and to south-central and southeastern points (R. 61).

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points, to which petitioner and other carriers serving such points were parties, were on file with the Interstate Commerce Commission; and the rates shown by these tariffs for a commercial shipment between two given points were identical for each of the alternative routes here in question, regardless of mileage (R. 57–58, 62–65, 67, 69, 71).

The bulk of the shipments here involved passed over petitioner's non-land-grant lines.[5] Recognizing that its Equalization Agreement required certain land-grant deductions to be made from the tariff rate for these shipments, petitioner allowed the United States the rate reductions to which the Government would have been entitled had it actually made the shipments via one of the available land-grant routes between origin and destination. The route which petitioner selected for this purpose was somewhat longer than the route which it actually used for the shipments and contained some land-grant mileage (R. 57–72). However, the Government claimed the deductions to which it would have been entitled had it used a still longer available alternative route between these points, comprising greater land-grant mileage.[6] Since the commercial tariff rates over either avail-

[5] To the minor extent that the shipments passed over land-grant connecting lines, the proper land-grant deductions were allowed to the Government by petitioner. There is no question here as to these deductions.

[6] On most of the 147 shipments of the Federal Surplus Relief Corporation (excepting merely certain shipments which originated at East St. Louis, Ill.), the route selected

able route was the same,[7] the greater land-grants included in the route selected by the Government resulted in lower rates than those allowed under the route selected by petitioner.

The Government paid the lower rates (totalling $86,052.47), and petitioner thereupon brought suit in the Court of Claims for the difference between the amount paid and the rates calculated by the route which it had selected (the alleged balance being $10,555.36 (R. 36, 57, 61)). The United States counterclaimed for an alleged overpayment of $1,251.73 according to its calculations (R. 42, 46).[8] The Court of Claims denied recovery to petitioner and entered judgment on the counterclaim for the Government (R. 47). The court held that the "unambiguous language of the Equalization Agreement" required petitioner "without qualification or exception to accept for the transporta-

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by petitioner and the Government for purposes of equalization were identical to Cairo, Ill.; from Cairo to destination the routes diverged, the Government's route being somewhat longer and containing more land-grant mileage than the route selected by petitioner. Consequently, the controversy as to these shipments centers about the equalization route selected south of Cairo to destination (R. 57).

[7] Except as to four shipments, for which the rates over the route selected by the United States for equalization were 10% higher than the regular rate. In computing its charges, the United States duly increased the base rate 10% before making the land-grant deductions (R. 65–66, 69–71).

[8] This consisted of an alleged overpayment on certain shipments of $1,638.56, and alleged underpayments on others of $386.83, or a net overpayment of $1,251.73 (R. 46, 60, 72, 74).

tion of Government property the lowest net rates available over land-aided routes" (R. 43).

SUMMARY OF ARGUMENT

I

The terms of the Equalization Agreement are plain and unqualified. It explicitly requires petitioner to accept, for the transportation of property which could be shipped at reduced rates over land-grant roads, "the lowest net rates lawfully available" to the Government. It is undisputed that the shipments here in question could lawfully have moved over the land-grant route selected by the Government in computing the charges due to petitioner, and that if such a route had been followed, the rates approved by the court below would have been the proper transportation charge. Since petitioner has contracted to equalize its rates to "the lowest net rates lawfully available" to the Government, it was required under the unequivocal provisions of the Agreement to accept the rates which would have been chargeable to the Government if the shipments had moved over the longer land-grant route.

II

The purpose of the Equalization Agreement is twofold: (1) to enable non-land-grant roads to complete with land-grant roads for Government business; and (2) to enable the Government to

make shipments at the lowest rates available to it as a result of its land-grant policy. To read into the Agreement a proviso not contained within it, *viz*, that the land-grant routes must not only be available to the Government but must also be "routes over which the Government traffic might normally move in the absence of the agreement" (Pet. 3), would nullify the purpose and objectives of the Agreement. Whether an available land-grant route is competitive, in the ordinary commercial sense, with the non-land-grant route actually followed is of no significance. For if the rates are the same, the Government will usually prefer the shorter route; whereas if the rates vary, the Government will usually prefer the cheaper route. Historically, shipment of Government property has always been at the most economical rate available, even if great circuity of routings was required. An agreement intended to permit diversion of Government traffic to non-land-grant routes should not be construed to require the Government to pay higher rates than if it had not entered into the agreement.

Where economical transportation is a controlling desideratum, circuity of routes is not objectionable to commercial shippers. This factor has been utilized by carriers to obtain tariff rates for circuitous routes which are sufficiently low to enable them to compete for traffic which would otherwise move on shorter routes. Thus,

the commercial rate applicable to the shipments here involved was the same, regardless whether they moved over the longer and more circuitous route selected by the Government for purposes of computation or over the more direct route actually used by petitioner. That the longer route may not have been as desirable for certain shipments as the shorter route is of no consequence, since it is undisputed that all shipments here involved could lawfully have moved over the longer route at the rates which the Government sought to pay petitioner.

To construe the Agreement, as petitioner does, to mean that a land-grant route selected for computation must be one which competes with the actual route and which is reasonably likely to have been used in lieu of the shorter route, would, as the court below held (R. 46), "unavoidably result in uncertainty, confusion, and constant controversy". To determine the relative practicability and desirability of all available routes might require factual research into hundreds, or even thousands of different routes for every shipment to determine whether under the particular circumstances that shipment would move as satisfactorily under a more economical route as under the route of an equalizing carrier. The impracticability of making such an inquiry before each shipment would inevitably lead Government officers to avoid controversy by actually shipping over the circuitous low rate land-grant

route, thus defeating the very purpose for which petitioner and other non-land-grant roads entered into equalization agreements. Circuity of routing was well known to the parties when the Agreement was made; and the courts should not read into the contract an undesirable and impractical provision which the parties themselves failed to include.

ARGUMENT

I

THE PLAIN TERMS OF THE EQUALIZATION AGREEMENT SUPPORT THE CONSTRUCTION OF THE COURT BELOW

Under the Equalization Agreement, the rate chargeable by petitioner for "the transportation of property shipped for account of the Government of the United States and for which the Government of the United States is lawfully entitled to reduced rates over land-grant roads," is to be—

> the lowest net rates lawfully available, as derived through deductions account of land grant-distance from the lawful rates filed with the Interstate Commerce Commission applying from point of origin to destination at time of movement (R. 55–56).

The rates applicable to the routes selected by the Government for equalization purposes clearly comply with these criteria.

It has been stipulated that the property involved in the 374 shipments in this case was shipped for account of the Government of the

United States; and that in respect of such shipments the Government is lawfully entitled to reduced rates over land-grant roads (R. 58, 59, 71–72), and petitioner in fact offered to allow the Government the reduced rates chargeable over the land-grant routes which petitioner selected (R. 29, 57, 71–72).

The "lawful rates filed with the Interstate Commerce Commission applying from point of origin to destination at time of movement" were set forth in tariffs to which petitioner as well as the land-grant carriers serving the points in question were parties (R. 57–58, 62–65, 67, 69, 71). With the single exception already noted (see n. 7 *supra*), none of these tariffs imposed any distance limitation upon the application of the commercial rates published therein, and the rates listed therein for commercial shipments between two given points were the same whether the shipment moved over petitioner's lines (the actual route of the shipments here in question), the somewhat longer land-grant routes selected by petitioner for equalization purposes, the still longer land-grant routes selected by the Government for the same purposes, or any other "routes made by the use of the lines of any of the carriers parties to this tariff" (R. 57–58, 59–60, 62–65, 66–69, 71–72).

From these "lawful rates" concededly applicable to the land-grant route selected by the Government for equalization, the Government

made "deductions account of land-grant distance" (R. 59–65, 71–72). These consisted of the statutory 50% deduction multiplied by the percentage of land-grant mileage between the points in question.[9] Since the net rates resulting from this computation would concededly apply to the shipments in suit had they actually been transported via the land-grant routes selected by the Government for equalization purposes, such rates would seem to fall clearly within the category of "the lowest net rates lawfully available," chargeable to the Government under the Agreement.

Petitioner seeks to avoid this obvious construction of the Equalization Agreement by arguing that the term "available" is ambiguous, and can mean "capable of being used to accomplish the purpose of the contract"; that since the purpose of the Agreement is to secure competitive traffic, the term should be construed to refer to land-grant rates "available" over *competitive* routes; consequently, that "the lowest net rates lawfully *available*" do not include rates over land-grant routes which are so circuitous as not to be competitive with the route actually used (Pet. Br. 24, 30, 38–44). This contention not only rejects the ordinary and accepted meaning of the term "available" in favor of interpretations given to it in totally dissimilar contexts, but ignores the basic purpose and objectives of the Agreement.

[9] See n. 1, p. 2, *supra*.

Government rates over land-aided roads are always predicated on commercial rates, from which deductions follow by operation of law in return for benefits conferred. *Louisville & Nashville R. R. Co.* v. *United States,* 57 C. Cls. 268, 277; *Same,* 58 C. Cls, 622, 631. Consequently, a net land-grant rate is "lawfully available" to the United States whenever it represents the result of land-grant deductions from the rate published in a tariff open to the public for application to shipments over that route. *Southern Pacific Co.* v. *United States,* 60 C. Cls. 662, 671. This simple reading of the term "available" finds support even in decisions construing it in different circumstances. As the authorities cited by petitioner itself show, "the ordinary meaning of 'available' is 'usable, capable or being used to advantage.'" See *Hamilton* v. *Menominee Falls Quarry Co.,* 106 Wis. 352, 81 N. W. 876, 878; Bouvier's Law Dictionary (Rawles, 3rd rev.); Webster's New International Dictionary (2d ed., unabridged, 1936).

That the usual meaning of "available" was the one intended by the parties to the Agreement is indicated by its background of decisions, judicial and administrative, rendered before the Agreement was executed. In 1923, when petitioner was a party to a freight equalization undertaking identical with that at bar, the Court of Claims held that an equalization agreement such as is here involved "provides for deductions from the

lawful established rate based upon the route having the *longest mileage of land grant"* (italics supplied). *Gulf & Ship Island R. R. Co.* v. *United States,* 58 C. Cls. 41, 49.[10] Likewise, in

[10] Petitioner cites *Louisville & Nashville R. R. Co.* v. *United States*, 61 C. Cls. 1 (1925), and *Northern Pacific R. R. Co.* v. *United States*, 72 C. Cls. 563 (1931), to support its contention that circuitous land-grand routes may not be used for equalization (Pet. Br. 11, 13, 24, 33). Neither supports this view. The *Louisville* case involved an equalization agreement which was similar to that here involved, entered into by several carriers, but an exception applicable to the Seaboard Air Line Railway called for equalization of "the net cash rates established via the longest land-grant mileage from point of origin to destination *over usually traveled routes* in connection with published tariff rates legally filed with the Interstate Commerce Commission." [Italics added.] The court found the record unsatisfactory as to whether the exception was applicable to the shipments for which plaintiff sued. It held that the land-grant deductions made by the Government were improper because, if the exception applied, the land-grant route used by the Government for equalization purposes was not a "usually traveled route;" and if the exception did not apply, there was "no showing that the deductions made * * * were from a lawful rate filed with the I. C. C. applying from point of origin to destination, and applicable as against" plaintiff or Seaboard (61 C. Cls. at 10–11). Its remarks concerning the "roundabout character and increased mileage" of the route used for equalization (p. 10) were purely dictum, obviously grounded upon the absence of a lawful filed tariff for that route. Indeed, the court disavowed any intention "to hold anything with reference to the use of the route in question as an equalizing route to the extent of establishing a controlling precedent. We determine only this case."

Northern Pacific R. R. v. *United States*, 72 C. Cls. 563, 575, merely involved the question of whether certain shipments were covered by the equalization agreement, and the court's passing remark as to "comparison with competing routes"

1913 when petitioner was a party to a freight equalization obligation identical with that here involved, the Comptroller of the Treasury ruled that such an undertaking requires the carriers "to accept for the transportation rendered the Government the same net rates as would apply over the route of longest land grant." 20 Comp. Dec. 167, 169; cf. 22 Comp. Dec. 129 (1915); 18 Comp. Gen. 81, 83 (1938).[11] Thereafter, peti-

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(p. 575) was purely *obiter*. *Gulf & Ship Island R. R. Co.* v. *United States*, 58 C. Cls. 41, 49, is the only holding in point in the Court of Claims, besides the decision below; and both are in accord with our view.

[11] Petitioner places considerable reliance (Pet. 34–36) upon the Comptroller General's decision of March 7, 1939 (18 Comp. Gen. 691, 694), which postdated the agreement and shipments here in suit. There the Comptroller General approved a maximum scale of distances proposed by the Treasury Department as an administrative guide to the extent of circuity routing under equalization agreements. The circuity percentages, graduated according to distances, ranged from 170% to 200%. However, the Comptroller General expressly disavowed any intention to preclude utilization of equalization routes exceeding these limitations, saying "it would not appear that any invariable rule should be adopted *as an accounting procedure* which by reason of its arbitrary application might operate to deprive the Government of benefits in some instances otherwise available and reasonably consistent with the purpose of the equalization agreement" (pp. 697–698, italics supplied). The schedule was thus approved merely as a guide to discretionary administrative application, subject to being superseded wherever the agreement afforded greater rights. In any event, this ruling postdated the contract and shipments here in question; any administrative construction by which the parties are to be bound must precede the transaction. Cf. *Southern Pacific Co.* v. *United States*, 307 U. S. 393, 401.

tioner renewed its agreement without qualification in the aspect here involved. See Manual for Quartermaster Corps (U. S. Army, 1916), Vol. 2, App. pp. 226, 230. Such renewal in the light of this administrative interpretation is highly significant in construing the contract; and in view of the objective of the Agreement—to secure on nonaided roads the land-grant savings to which the Government is entitled if it uses land-grant roads—any doubt must be resolved in favor of the Government. Cf. *Southern Pacific Co.* v. *United States,* 307 U. S. 393, 400–401.

That petitioner was not unaware of the meaning and implications of the language employed without qualification in its "Freight Land-Grant Equalization Agreement" may be inferred from the express qualification which it imposed upon a similar undertaking in its "Passenger Land-Grant Equalization Agreement" with the United States, which had been executed on January 1, 1917. The 1917 agreement provided:

> For the transportation of persons for whom the United States Government is lawfully entitled to reduced fares over land-grant roads, [petitioner and other carriers] * * * agree * * * to accept lowest net fare * * * lawfully available, as derived, through deductions account land-grant distance *via a usually traveled route* for military traffic, from a lawful fare filed with the Interstate Commerce Commission as applying from point

of origin to destination via such route at time of movement."[12]

Petitioner could readily have undertaken to include a similar qualifying provision in the section of its Freight Equalization Agreement dealing with exceptions (R. 14–16), had it desired to impose any qualification upon the land-grant routes which the Government was entitled to select for equalization purposes. In the circumstances, the failure to include the qualification which petitioner now seeks to engraft upon its agreement cannot be deemed an oversight, and should be taken to express the parties' intention. Cf. *Maryland* v. *Railroad Co.*, 22 Wall. 105, 112.

II

THE OBJECTIVES AND POLICY OF THE EQUALIZATION AGREEMENT REQUIRE THAT IT BE CONSTRUED TO PERMIT USE OF THE LOWEST POSSIBLE LAND-GRANT RATE

Petitioner argues that the purpose of an equalizing agreement was to secure for it "traffic which, in the absence of the agreement, would be *likely* to move over *competing land-grant routes*, as distinguished from traffic which is 'possible' of routing via the cheapest land-grant route"; that the routes used by the United States were noncom-

[12] See Manual for Quartermaster Corps, *supra*, at p. 223. Petitioner is at present a party to a substantially similar Passenger Equalization Agreement (Joint Military Passenger Equalization Agreement No. 20, July 1, 1943–June 30, 1944).

petitive with petitioner's route; and hence the Agreement did not require petitioner to equalize rates over such noncompetitive routes (Pet. 30).[13] Conceding that no express language in the Agreement compels this construction, petitioner argues nevertheless that it is a reasonable interpretation of an "ambiguous" agreement (Pet. 19). It is clear, however, that equalization agreements were entered into because the Government's policy of securing the most economical transportation would have diverted the shipments exclusively to land-grant roads, regardless of the degree of circuity and the "noncompetitive" nature of the land-grant and non-land-grant routes in so far as commercial shippers are concerned.

The history of rate concessions based upon land-grants demonstrates that the prime and only objective of such concessions was to obtain the lowest possible transportation rate for the Government. In return for the immensely valuable land-grants to railroads (estimated to total as high as 2½ billion dollars, see n. 2, p. 3, *supra*), the Government obtained rate-savings agreements. These

[13] Petitioner has apparently changed its position in this regard. In the court below, it urged that the "routes used by the defendant for this purpose are noncompetitive and impractical for the purpose of commercial traffic. Hence, plaintiff contends that it is not required under the equalization agreement to equalize rates computed via those routes." (Pl. Br. in C. Cls., p. 113.) Petitioner argues here that the routes used by the Government for computation were noncompetitive for Government traffic.

at first were not uniform; some roads were required to offer free transportation (the "free-grant lines"), others could make some charges.[14] These discrepancies proved unsatisfactory. Since "officials charged with the procurement of transportation for the Government are required to secure such transportation at the lowest available rates, the free-grant lines were used, singly or in combination with other lines, wherever such use enabled lower charges. Very circuitous routing was often employed to utilize the free grant lines."

[14] There were three types of land-grant roads: (1) Some early land-grant acts provided that Federal troops and property should be transported over the aided railroads free of charge to the Government. See Act of July 25, 1866 (14 Stat. 239). These lines were known as "free-grant lines." (2) The majority of the land-grant acts prior to 1862 provided in substance that the aided railroads should be public highways "for the use of the Federal Government, free from toll or other charge for the transportation of any property or troops of the United States." See Act of September 20, 1850 (9 Stat. 466). These railroads were known as "free-toll lines," and under a series of statutes and court decisions were entitled to receive payment for transportation of Government troops and property (18 Stat. 72, 74; 18 Stat. 452, 453; *Lake Superior & M. R. Co.* v. *United States*, 93 U. S. 442; *Atchison T. & S. F. R. Co.* v. *United States*, 12 C. Cls. 295, and 15 C. Cls. 126). (3) Other land-grant acts required the aided railroads to furnish transportation "at such charges as Congress might impose." See Act of July 27, 1866 (14 Stat. 292, 297). These lines were known as "Congressional rate-lines." The Act of July 16, 1892 (27 Stat. 174, 180) authorized the Secretary of War to fix the Government's rates over free-toll and Congressional rate railroads, but not in excess of 50 percent of those charged to the general public.

II *Public Aids to Transportation* (Fed. Coordinator of Transp., 1938), p. 42. The large volume of this transportation placed a heavy burden upon the free-grant lines, and to relieve the situation Congress by a series of acts provided that free-grant roads should receive the same compensation as the other land-grant railroads,[15] now a minimum of 50% of the commercial rate, increasing according to the percentage of non-land-grant mileage in the route. See n. 1., p. 2, *supra.*

Because Government transportation officers were required to utilize the lowest cost routes available, nongrant roads were not used, wherever possible, until they agreed to meet the low rate which the grant-roads offered;[16] equalization agreements were soon entered into by virtually all nonaided roads; and since the percentage of land-grant determined the size of the deduction, partially aided roads agreed to meet the rates of roads whose routes contained greater land-grants. See pp. 3–4, *supra.*

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[15] See, for example, Act of October 6, 1917 (40 Stat. 345, 361); Act of May 23, 1928 (45 Stat. 722); Act of February 14, 1933 (47 Stat. 800).

[16] See, for example, the instructions issued by the Quartermaster General to shipping officers: "Where * * * the carriers * * * will not equalize the lowest net rates available on certain specified traffic, such traffic should not be forwarded via the carriers shown, unless no other route is available. Where special exceptions provide that lowest net rates will not be protected via certain routes, such routes should not be used." Manual for the Quartermaster Corps (U. S. Army 1916), App. No. 9, Vol. 2, p. 223; Quartermaster General Circular No. 15, May 18, 1922.

The manifest purpose of the equalization agreements has been recognized by this Court. "In order to obtain a share of Government traffic, non-land-grant roads, have entered widely into freight-land-grant equalization agreements by which they agree to carry freight, routed over their lines at the lowest net rates lawfully available, as derived through deduction account of land grant distance * * *." *Southern Pacific Co.* v. *United States,* 307 U. S. 393, 394, n. 1; see also 17 Comp. Dec. 978, 982; 20 Comp. Dec. 167, 169; 22 Comp. Dec. 129, 130. "By reason of these agreements, much transportation of Government troops and property is performed by equalization lines which otherwise would have to be performed by the reduced-rate land-grant lines." *Public Aids to Transportation, supra,* at p. 42. The equalizing roads were ready to accept the maximum land-grant deductions, for "the companies consider a 50% rate preferable to an almost total loss of this type of freight." Norris Kenny, *The Transportation of Government Property and Troops over Land-Grant Railroads,* 9 Journal of Land and Public Utility Economics, 368, 378.

Because of the Government's special emphasis upon economy of transportation, the likelihood that a shipment will move by a longer route to save on rates cannot be measured by the likelihood that a private commercial shipper would ever use the longer route. Comparison with commercial

shipments is idle inasmuch as the land-grant saving is available only to the Government. Historically, even the most circuitous route open to free Government traffic was found more desirable by Government transportation officers than shorter, more expensive routes. Since Government transportation will be given to those routes affording the cheapest rates (21 Comp. Dec. 744, 745), the Equalization Agreement, as the court below held, "was designed to give the equalizing carrier a portion of the Government business that was possible of routing over the governing land-grant route" and "to give the Government a greater range in choice of routes where considerations of economy entered into the selection" (R. 27).

Indeed, where a similar incentive exists for commercial shippers, as by a disparity in rates, circuitous shipments are by no means uncommon. It is well recognized that circuitous routing is in some circumstances favored by both carriers and shippers.[17] In *In the Matter of Coal from and to Points in Alabama*, 238 I. C. C. 82, a carrier applied to the Interstate Commerce Commission to maintain rates over routes 161.8 percent circuitous.[17] And petitioner itself has urged before the

[17] The National Industrial Traffic League recently informed the Interstate Commerce Commission that it declined "to become a party to a plan calling for minimizing the use of 'so-called circuitous route' through the establishment of mileage limitations." Traffic World (Oct. 17, 1942), p. 912.

Interstate Commerce Commission the establishment of routes for commercial shipments which, as to many of the shipments here involved, are more circuitous than the land-grant routes selected by the Government for equalization purposes.[18]

That the routes characterized by petitioner as circuitous and impractical were available to and could have been used by the Government is not in question. It was stipulated below, and the Court of Claims found (R. 44), that the "land-grant routes so selected and used for computation of rates by defendant under lawful tariffs on file with the Interstate Commerce Commission were admittedly available to the commercial public and to the Government and could have been used for the making of all of the shipments in question." Clearly a commercial shipper using such a route could not be denied the rate fixed by the tariffs to which petitioner was a party, on the ground that

[18] See *Petroleum Products to Tennessee & Mississippi*, 248 I. C. C. 21; *Cement from Leeds, Ala., to Albany, Ga.*, 245 I. C. C. 374; *Scrap Iron to Ashland, Ky.*, 253 I. C. C. 77; *Rails and Cross Ties from Steelton, Pa.*, 253 I. C. C. 428; *Petroleum Products to Montgomery, Ala.*, 253 I. C. C. 392. Permission to establish rates for the circuitous routes was sought in relief of Section 4 of the Interstate Commerce Act (49 U. S. C. § 4 (i)), which prohibits greater compensation "for a shorter than for a longer distance over the same line or route in the same direction" and "any greater compensation as a through rate than the aggregate of the intermediate rates." Obviously, at the desired rates petitioner and the other applying carriers thought they could compete *via* such circuitous routes for traffic which they otherwise could not obtain.

the route was so much more circuitous than the direct routes over petitioner's road or over the land-grant road selected by petitioner for equalization, that shippers would not normally utilize the longer route. The "routing instructions" in the tariffs on file with the Interstate Commerce Comission provided that the listed rates "apply via *all routes* made by the use of the lines of any of the carriers parties to the tariff, except as otherwise specifically provided" (R. 58–60, 71–72), and it is settled that under such a provision the circuity of the route selected is not a ground for refusal to apply the published rate. *Great Atlantic & Pacific Tea Co.* v. *Alton R. R. Co.*, 226 I. C. C. 398, affirmed 231 I. C. C. 743; *Union Underwear Co., Inc.* v. *Frankfort & Cincinnati R. R. Co.*, 214 I. C. C. 695, 697; *Wilbanks & Pierce, Inc.* v. *Atlanta and West Point R. R. Co.*, 235 I. C. C. 371, 374; cf. *Allen Manufacturing Co.* v. *Louisville & Nashville R. R. Co.*, 194 I. C. C. 209, 211.

Petitioner urges that some of the property shipped by the Government consisted of livestock, and that the routes chosen by it for equalization purposes were not practical routes ordinarily used for the shipment of livestock between those points (Pet. Br. 31, 48). But it is nowhere alleged or shown that such routes could not be used if the Government so desired. Indeed, petitioner itself was a party to an amendment to the tariff under which the route the United States used for com-

puting the net rates applicable to the shipments of livestock was expressly made available to commercial traffic at rates identical with those applicable to the more direct route used by petitioner.[19] Having agreed to open the "circuitous" route to commercial shipments at the rate applicable to the shorter route, petitioner cannot argue that the same route and rate are not here available to the Government (less land-grant deductions) (R. 56–60). Petitioner's contention that to require equalization of net rates computed *via* such land-grant routes would be unfair and unreasonable, is in effect an indirect attack on the reasonableness of the rates fixed by the filed tariffs for the "circuitous" routes—an attack which cannot be made in this proceeding. *Great Northern R. R. Co.* v. *Merchants Elevator Co.*, 259 U. S. 285, 291; *United States Navigation Co., Inc.* v. *Cunard S. S. Co.*, 284 U. S. 474, 481–483.

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[19] Prior to the date of these shipments, there were certain restrictions upon the application of the published tariffs to the movement of livestock over the route used by the Government for equalization purposes—*via* Meridian, Miss. The tariff to which the land-grant carriers and petitioner were parties (Speiden's I. C. C. 1335, R. 58) originally prohibited the application of the livestock rates listed therein to shipments from points in Illinois to North Carolina and Virginia, *via* Mississippi, Alabama, or Georgia (R. 58–59). However, Supplement No. 5 to that tariff removed this prohibition and made the rates from Cairo to points in Virginia and North Carolina applicable to commercial shipments *via* Meridian, Miss. (R. 59).

The desirability of the route selected for equalization, as a route of actual shipment, is in a real sense immaterial as well as conjectural. The entire objective of the Equalization Agreement is to divert the shipment to the non-land-grant route; the land-grant route is selected not for actual use but merely for purposes of computing the "lowest net rates lawfully available" in order to determine the concession which the Government could lawfully have obtained had it elected to use that route, and which petitioner agreed to meet in order to induce the use of its road. Consequently, it is wholly irrelevant whether the goods would have moved over the alternative land-grant route in the absence of an equalization agreement; it is sufficient that the goods could have moved at the rates sought to be applied by the Government. Plainly nothing in the Equalization Agreement requires that computation of the applicable net rate turn upon such issues as whether the route selected has the same facilities for caring for the goods as the route used; the agreement does not differentiate between the kind of property shipped, nor does it specify that actually available routes may not be used for equalization unless commercial shippers find it convenient and practicable to use it for such goods.

The lack of merit in petitioner's contention that selection of a land-grant route for equalization purposes depends upon its practicability and the

likelihood that it would have been used for the shipment in question is shown by the "uncertainty, confusion, and constant controversy" to which, as the court below observed, such a requirement would lead (R. 46). Each movement of Government property under an equalization agreement would, under petitioner's contention, require a detailed and expert inquiry as to which of all available land-grand routes running from point of origin to destination were "practicable" for the shipment and the property in question, and hence appropriate for equalization computations.

This would entail an examination of such matters extraneous to the agreement and to published tariffs, as the nature and condition of the articles transported, the number of stops on the various land-grant routes, the facilities for caring for the property in case of need, the comparative mileage and time consumed *via* different routes between the points of origin and destination, whether the circumstances permitted more leisurely shipment or whether time was of the essence, and numerous other conjectural factors grounded upon the hypothesis that the goods have moved over a route not actually used. Since the determination of such questions could not be predicted with certainty, and might often require a protracted hearing, the only result of the re-

quirement for which petitioner contends would be to force Government shipping officers to disregard the non-land-grant carrier entirely and ship by the lowest rate land-grant route. The uncertainty thus injected into the rates payable for any equalization shipment would virtually nullify equalization agreements for all practical purposes.[20]

These considerations should preclude any attempt to "import words into the contract which would make it materially different in a vital particular from what it now is." *Gavinzel* v. *Crump*, 22 Wall. 308, 319. The objective of the agreement being to obtain as low a rate as the Government could get on any land-grant route running between the points of origin and destination, it should be construed accordingly; and if there be

[20] That the task which petitioner would impose upon Government shipping officers is burdensome may be seen from plaintiff's Exhibit No. 26 (R. 78A). That shows the numerous routes between Cairo, Ill., and the respective destinations which were available for the movement of the shipments listed in Exhibit No. 4. Under the "all routing" provision of the applicable tariffs here involved (R. 59–71), if one takes each carrier from Cairo and determines all the possible combinations of carriers forming through routes to each destination, the number of available routes is almost beyond calculation. See *Cancellation of Rates and Routes via Short Lines*, 245 I. C. C. 183, 190, in which it is stated that over 700 routes between Kansas City, Mo., and Chicago, Ill., were authorized by tariff; see also *Lumber from South and Southwest*, 198 I. C. C. 753, 755, in which it was testified that 4,597 open routes were available between Alexandria, La., and Chicago, Ill.

any doubt, that "doubt must be resolved in favor of the Government." *Southern Pacific Co.* v. *United States*, 307 U. S. 393, 401.[n]

CONCLUSION

For the foregoing reasons, we respectfully submit that the judgment below should be affirmed.

CHARLES FAHY,
Solicitor General.

FRANCIS M. SHEA,
Assistant Attorney General.

DAVID L. KREEGER,
Special Assistant to the Attorney General.

JEROME H. SIMONDS,
Attorney.

MARCH 1944.

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[n] The limitations upon circuity approved as rule of thumb by the Comptroller General in 18 Comp. Gen. 691, may be useful as a guide to voluntary administrative action. But where the transportation officer desires to invoke the full benefit of an equalization agreement, as in the case at bar, such limitations would not only be unauthorized by the agreement or any provision of law, but might frustrate the objective of the agreement by rediverting Government traffic to the circuitous land-grant routes. For, as the court below properly observed, in "the transportation of government property the competition for it is between the non-land-grant or equalization carriers" (R. 44).

APPENDIX

The relevant provisions of the Equalization Agreement of November 29, 1933, are as follows (R. 14–15):

FREIGHT LAND-GRANT EQUALIZATION AGREEMENT

The QUARTERMASTER GENERAL,
War Department, Washington, D. C.

SIR:

1. The following carriers: Southern Railway Company hereinafter called these carriers, hereby agree, subject to the conditions and exceptions stated below, to accept for the transportation of property shipped for account of the Government of the United States and for which the Government of the United States is lawfully entitled to reduced rates over land-grant roads, the lowest net rates lawfully available, as derived through deductions account of land-grant distance from the lawful rates filed with the Interstate Commerce Commission applying from point of origin to destination at time of movement.

2. Conditions—

(a) On traffic destined to and/or received from points on lines of other carriers this agreement will only apply in connection with such carriers as have an agreement of the form stated in paragraph 1 above on file with the [fol. 21] Quartermaster General, War Department, Washington, D. C., except as otherwise provided under

the heading of Exceptions in paragraph 3 below.

* * * * *

4. This agreement becomes effective December 1, 1933, and remains in effect until January 1, 1935, and thereafter from year to year unless these carriers file notice of withdrawal or change with The Quartermaster General, War Department, Washington, D. C., at least sixty days prior to the beginning of any calendar year.

5. This agreement cancels all previous equalization agreements, if any, on freight traffic filed by these carriers.

Respectfully submitted,

SOUTHERN RAILWAY COMPANY,
E. R. OLIVER, *Vice President.*

Accepted for The Quartermaster General:
By: R. E. Shannon, Capt., Q. M. C., Ass't.
Date: December 5, 1933.

U. S. GOVERNMENT PRINTING OFFICE: 1944

SUPREME COURT OF THE UNITED STATES.

No. 578.—October Term, 1943.

Southern Railway Company, Petitioner, vs. The United States. } On Writ of Certiorari to the Court of Claims.

[April 24, 1944.]

Mr. Justice Douglas delivered the opinion of the Court.

In 1933 petitioner, a common carrier, entered into a "Freight-Land-Grant Equalization Agreement" with the Quartermaster General, acting for the United States. This agreement was made under the authority of § 22 of the Interstate Commerce Act. 24 Stat. 387, 49 U. S. C. § 22. So far as material here, petitioner agreed

to accept for the transportation of property shipped for account of the Government of the United States and for which the Government of the United States is lawfully entitled to reduced rates over land-grant roads, *the lowest net rates lawfully available*, as derived through deductions account of land-grant distance from the lawful rates filed with the Interstate Commerce Commission applying from point of origin to destination at time of movement. [Italics added.]

From the point of view of the carrier the purpose of the agreement was to give it a portion of government business which might have been routed over land-grant routes.[1] Land-grant roads were under an obligation to furnish transportation to the government free of charge or at reduced rates. See Public Aids to Transportation, Federal Coordinator of Transportation (1938), Vol. II, pp. 3-42 for a review of the various Acts of Congress. At the time when this agreement was made land-grant roads were required to allow the United States 50% deductions from the com-

[1] The Court of Claims made the following finding in this case: "The purpose and effect of the freight equalization agreements of the defendant with plaintiff and with other common carriers was to equalize rates on Government property over various routes serving the same point of origin and destination, where one or more of those routes had been aided in whole or in part by grant of public lands, rates over all routes from point of origin to destination being brought down to the level of that over the route producing the lowest net rate on account of land-grant deduction. This arrangement was designed to give the equalizing carrier a portion of the Government business that was possible of routing over the governing land-grant route, and to give the Government a greater range in choice of routes where considerations of economy entered into the selection."

mercial rate for the transportation of property or troops of the United States.[2] 43 Stat. 477, 486, 10 U. S. C. § 1375. "Railroads which compete with the reduced-rate lines found themselves unable to participate, not only in the local transportation of Federal troops and property between the termini of the reduced-rate lines, but also in through movements from and to points beyond such termini." Public Aids to Transportation, *supra*, p. 42. Accordingly most of those roads entered into land-grant equalization agreements with the United States in order to get as large a share of the business as possible.[3] See *Southern Pacific Co.* v. *United States*, 307 U. S. 393, 394. The one involved in the present case is an example.

This suit involves 374 shipments of government property over petitioner's lines and its connections made between 1934 and 1938 while this agreement was in force.[4] There were available in case of each shipment several routes between the point of origin and the point of destination. Petitioner's route was in general the shortest. But there were other routes containing land grants of varying percentages which it was possible to use for these shipments. And the rates shown by tariffs on file with the Interstate Commerce Commission for freight shipments between the points in question were the same (with exceptions not important here) for each of the alternative routes regardless of the mileage. Petitioner computed its charges so as to allow the rate reductions to which the United States would have been entitled had it actually made the shipments by one of the available, alternative land-grant routes. The United States, however, claimed greater deductions. It showed a longer and more circuitous route which could have been used[5] and which contained more land-grant mileage than the alternative route chosen by petitioner. Since the tariff rates over either alternative route were the same, the greater land grants included in the route selected by the United States re-

[2] But see § 321 of the Transportation Act of 1940, 54 Stat. 898, 954.

[3] Petitioner's road includes 145 miles of land-grants. But as pointed out in Public Aids to Transportation, *supra*, p. 42, "The land-grant railroads are parties to these agreements for the reason that, in many instances, a non-aided portion of a land-grant railroad competes with a reduced-rate portion of another land-grant railroad."

[4] These consisted of 147 shipments of livestock by the Federal Surplus Relief Corporation from midwestern points to southeastern points; and 227 shipments of property by the Tennessee Valley Authority.

[5] Thus in case of the shipments of livestock the routes on which the United States made its computation of rates were from 137 to almost 700 miles longer than the ones actually used.

sulted in lower rates than those which were computed on the basis of the land-grant route selected by petitioner. The United States paid the lower rates. Petitioner brought suit in the Court of Claims for the difference between the amount paid and the rates computed on the basis of the tariffs for the route which it had selected. The Court of Claims denied recovery. — Ct. Cls. ——. The case is here on a petition for a writ of certiorari which we granted because of the public importance of the problem.

The Court of Claims found that the circuitous routes on which the United States based its computations could have been used for the shipments in question. But petitioner contends that such an interpretation of the word "available" is unreasonable in the present context and that it should be construed to mean "capable of being employed or made use of with advantage". In that connection, petitioner argues that it would have been improvident and uneconomical to ship livestock on such circuitous routes and that those routes would never in fact have been used by the United States. It is argued, moreover, that the equalization agreement, properly construed requires petitioner to equalize rates computed by land-grant routes which are competitive for government traffic. Its purpose, according to that contention, was to secure for petitioner traffic which in its absence would be likely to move over competing land-grant routes, as distinguished from traffic which was possible of routing over the cheapest land-grant route.

We agree, however, with the Court of Claims. In this context the "lowest net rates lawfully available" mean to us the lowest net rates which could have been obtained on the basis of tariffs on file with the Interstate Commerce Commission. Whether such circuitous routes as were employed in the present computation would have been actually used for these shipments in absence of the equalization agreement is of course unknown. But circuitous routing by the United States in order to obtain the benefits of its earlier land-grants to railroads was apparently a common practice. See Public Aids to Transportation, *supra*, p. 42. The records show that the privilege of obtaining the benefit of rates on land-grant routes is a valuable privilege indeed.[6] We cannot assume that the United States intended to surrender any of those benefits by granting the equalizing carriers more favorable rates than those to which it was lawfully entitled on the land-grant

[6] See Public Aids to Transportation, *supra*, pp. 43-45 Kenny, Land-Grant Railroads and the Government (1933), 9 Journal of Land & Public Utility Economics 368.

routes, unless the purpose to do so was plainly expressed. It must be remembered that the equalization agreement was a rate-making agreement. Its object was to divert shipments to the non-land-grant route. The land-grant route was chosen merely for the purpose of computing the rate. The fact that in a given case the shipment probably would not have moved over the land-grant route is immaterial. The United States was bargaining for low rates for the shipment of its property. It did not differentiate between the types of property shipped. It did not in terms state that land-grant routes, though actually available, would not be used in computing the rate unless they would in fact have been convenient or practicable to use for the particular shipment. The standard it prescribes is "the lowest net rates lawfully available." We may not resolve any ambiguities which may linger in that phrase against the United States. Cf. *Southern Pacific Co.* v. *United States, supra,* p. 401. We are not warranted in assuming that the United States was more generous to this carrier than the language of the contract requires. We must assume that the contracting officers for the United States drove as provident a bargain as a reading of the agreement fairly permits.

At times the United States has made equalization agreements which were more favorable to the equalizing carriers than the instant one appears to be. Thus in 1917 a passenger land-grant equalization agreement was made with petitioner and other carriers[7] whereby they agreed to accept the lowest net fare "lawfully available, as derived, through deductions account land-grant distance *via a usually traveled route for military traffic,* from a lawful fare filed with the Interstate Commerce Commission as applying from point of origin to destination via such route at time of movement." (Italics added.) That agreement suggests that when the United States desired to give equalizing carriers more favorable rates than the lowest rates to which it was lawfully entitled on land-grant routes, it chose apt words to express its purpose. It also gives added significance to the omission of any such qualification in the present agreement. It suggests that if we read into the agreement the qualification which the petitioner desires, we would remake the contract.

Much material bearing on administrative construction of various types of equalization agreements has been pressed upon us. But we have not relied on it as we found it inconclusive.

Affirmed.

[7] See Manual for the Quartermaster Corps, 1916 (1917), vol. 2, pp. 223, 230.